



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 23 अक्टूबर, 2019 / 01 कार्तिक, 1941

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 7th March, 2019

No. Shram(A) 6-2/2014 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding

Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/ order
1.	847/16	Bimla Devi	E.E. HPPWD, Dharampur	01-11-2018
2.	885/16	Sheela Devi	E.E. HPPWD, Dharampur	01-11-2018
3.	261/16	Tilak Raj	E.E. HPPWD, Jawali	02-11-2018
4.	266/16	Subhash Chand	E.E. HPPWD, Fatehpur	02-11-2018
5.	853/16	Vinod Kumar	Pr. Chief Conservator of Forest	13-11-2018
6.	760/16	Balbir Singh	Pr. Chief Conservator of Forest	13-11-2018
7.	798/16	Desh Raj	Pr. Chief Conservator of Forest	13-11-2018
8.	315/15	Hans Raj	D.F.O Suket	15-11-2018
9.	312/15	Sita Ram	D.F.O Suket	15-11-2018
10.	250/15	Pratap Singh	D.F.O Suket	15-11-2018
11.	517/15	Meena	E.E. HPPWD, Killar	20-11-2018
12.	380/16	Nain Dei	E.E. I&PH/HPPWD, Killar	21-11-2018
13.	352/16	Guddi Devi	E.E. I&PH/HPPWD, Killar	21-11-2018
14.	580/15	Jagdish	E.E. HPPWD, Killar	21-11-2018
15.	553/16	Sadiq Mohd.	E.E. HPPWD, Nurpur & others	24-11-2018
16.	270/16	Sulinder Kumar	E.E. HPPWD, Nurpur & others	24-11-2018
17.	832/16	Mohan Lal	E.E. HPPWD, Nurpur & others	24-11-2018
18.	552/16	Rakesh Kumar	E.E. HPPWD, Nurpur & others	24-11-2018
19.	828/16	Luknu Ram	E.E. HPPWD, Nurpur & others	24-11-2018
20.	554/16	Krishan Chand	E.E. HPPWD, Nurpur & others	24-11-2018
21.	827/16	Surjit Singh	E.E. HPPWD, Nurpur & others	24-11-2018
22.	820/16	Kashmir Singh	E.E. HPPWD, Nurpur & others	24-11-2018
23.	806/16	Sher Mohmd.	E.E. HPPWD, Nurpur & others	24-11-2018
24.	558/16	Baldev Singh	E.E. HPPWD, Nurpur & others	24-11-2018
25.	557/16	Roop Singh	E.E. HPPWD, Nurpur & others	24-11-2018

26.	560/16	Mohinder Singh	E.E. HPPWD, Nurpur & others	24-11-2018
27.	559/16	Surat Singh	E.E. HPPWD, Nurpur & others	24-11-2018
28.	623/16	Ramesh Chand	E.E. HPPWD, Nurpur & others	24-11-2018
29.	479/16	Milap Chand	E.E. HPPWD, Nurpur & others	24-11-2018
30.	478/16	Sukhdev Singh	E.E. HPPWD, Nurpur & others	24-11-2018
31.	499/16	Maggar Singh	E.E. HPPWD, Nurpur & others	24-11-2018
32.	476/16	Sham Singh	E.E. HPPWD, Nurpur & others	24-11-2018
33.	475/16	Subhash Chand	E.E. HPPWD, Nurpur & others	24-11-2018
34.	500/16	Fakardeen	E.E. HPPWD, Nurpur & others	24-11-2018
35.	556/16	Ashok Kumar	E.E. HPPWD, Nurpur & others	24-11-2018
36.	477/16	Kesar Singh	E.E. HPPWD, Nurpur & others	24-11-2018
37.	416/16	Uttam Chand	E.E. HPPWD, Nurpur & others	24-11-2018
38.	405/16	Labhu Ram	E.E. HPPWD, Nurpur & others	24-11-2018
39.	404/16	Kash Mohmd.	E.E. HPPWD, Nurpur & others	24-11-2018
40.	421/16	Sher Singh	E.E. HPPWD, Nurpur & others	24-11-2018
41.	423/16	Ashok Kumar	E.E. HPPWD, Nurpur & others	24-11-2018
42.	414/16	Sham Sunder	E.E. HPPWD, Nurpur & others	24-11-2018
43.	258/16	Kishan Bahadur	E.E. HPPWD, Nurpur & others	24-11-2018
44.	27/16	Pawan Kumar	E.E. HPPWD, Sunder Nagar	27-11-2018
45.	28/16	Karam Singh	E.E. HPPWD, Sunder Nagar	27-11-2018
46.	30/16	Mahajan Singh	E.E. HPPWD, Sunder Nagar	27-11-2018
47.	31/16	Prem Lal	E.E. HPPWD, Sunder Nagar	27-11-2018
48.	32/16	Surat Ram	E.E. HPPWD, Sunder Nagar	27-11-2018
49.	33/16	Lekh Ram	E.E. HPPWD, Sunder Nagar	27-11-2018
50.	34/16	Raghu Ram	E.E. HPPWD, Sunder Nagar	27-11-2018
51.	35/16	Khem Raj	E.E. HPPWD, Sunder Nagar	27-11-2018
52	36/16	Jai Ram	E.E. HPPWD, Sunder Nagar	27-11-2018

53.	38/16	Chaman Lal	E.E. HPPWD, Sunder Nagar	27-11-2018
54.	39/16	Doda Ram	E.E. HPPWD, Sunder Nagar	27-11-2018
55.	43/16	Pyare Lal	E.E. HPPWD, Sunder Nagar	27-11-2018
56.	44/16	Gandhi Ram	E.E. HPPWD, Sunder Nagar	27-11-2018
57.	25/16	Jagdish Chand	E.E. HPPWD, Sunder Nagar	27-11-2018
58.	41/16	Prakash Chand	E.E. HPPWD, Sunder Nagar	27-11-2018
59.	37/16	Ram Chand	E.E. HPPWD, Sunder Nagar	27-11-2018
60.	42/16	Shyam Lal	E.E. HPPWD, Sunder Nagar	27-11-2018
61.	40/16	Jai Singh	E.E. HPPWD, Sunder Nagar	27-11-2018
62.	577/15	Karam Singh	E.E. HPPWD, Chamba	29-11-2018
63.	794/16	Vidhi Chand	Conservator of Forest & others	29-11-2018
64.	802/16	Sanjeev Kumar	Conservator of Forest & others	29-11-2018

By order,

NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 847/2016
Date of Institution : 26-11-2016
Date of Decision : 01-11-2018

Smt. Bimla Devi w/o Shri Nek Ram, r/o Village and Post Office Kot, Tehsil Sarkaghat,
District Mandi, H.P. ...Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Sh. N. L. Kaundal, AR
For the Respondent	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Bimla Devi w/o Shri Nek Ram, r/o Village and Post Office Kot, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. during February, 2004 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity) filed by the claimant/petitioner revealed that petitioner had been engaged by respondent as beldar *w.e.f.* December, 1998 and that claimant/petitioner continuously worked upto 8.2.2004. It is alleged that petitioner had approached the respondent/department for her reinstatement but of no avail. It is contended that petitioner had completed more than 240 days in each calendar year and thus petitioner covered under the definition of 'continuous service' envisaged under Section 25-B of the Act. It is contended that service of petitioner had been unlawfully terminated by respondent *vide* notice under Section 25-F of the Act *w.e.f.* 9.2.2004 as per notice No. PWDPD/EA-II/E-12/2003-13705-07 dated 23.1.2004 as well as compensation of Rs. 4080/- *vide* demand draft No. 2008538 dated 09.1.2004. It is stated that respondent had been retrenched 1897 daily waged workmen of different categories in the month of May, 2004 and thereafter respondent had reinstated more than 1200 workmen of different categories but the service of petitioner had not been reinstated by the respondent. It has been specifically alleged that at the time of termination of the services of petitioner, department/respondent had even not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act as some junior workmen namely Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (01.01.2000) were retained by the respondent/department. It further transpires from the claim petition that after termination of the services of petitioner fresh hands had also been appointed by the respondent/department Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand Sunita Devi, Kirna Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar, Ruma Devi etc. who had been appointed in the years 2008 to 2014 but respondent had not been given any opportunity of re-employment to petitioner thereby respondent had also violated the provisions of Section 25-H of the Act. It is alleged that aggrieved with the action of the respondent violating Sections 25-F, 25-G and 25-H, petitioner had raised industrial dispute and copy of the same was forwarded to Labour Officer, Mandi who had tried to settle the dispute amicably but Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act to appropriate government *i.e.* Labour Commissioner, Shimla who turned down prayer of petitioner to refer the case of petitioner for adjudication to this Court on the ground that dispute *inter se* parties did not exist. Again aggrieved with the order passed by the Labour Commissioner, Shimla, the petitioner had also highlighted the case of one Sanjay Kumar s/o Shri Purbia Ram who had filed CWP No. 8315/2012 which was allowed and said Sanjay Kumar alongwith other co-workers had been awarded back wages, continuity in service as well as past service benefits who was entitled to all benefits except actual back wages. Accordingly, alleging the act of respondent in terminating service of petitioner *w.e.f.* February, 2004 without complying necessary provisions of the Act, the same was illegal in violation of provisions of Industrial Disputes Act. Moreover, the petitioner did not remain gainfully employed either government department or private organization from the date of her illegal termination who is entitled for back wages. Accordingly, illegal termination order has been prayed to be set aside with direction to respondent to reinstate petitioner in service with full back wages, seniority, continuity in service and with all consequential service benefits. It has also been prayed that respondent be directed to regularize the services of petitioner on basis of policy framed by the government besides on the basis of seniority.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits, admitted to the extent that petitioner was engaged as daily waged beldar in December, 1998 who had worked intermittently upto February, 2004 and petitioner had been retrenched in the month of February, 2004 after adopting all codal formalities and at the time of retrenchment petitioner had given retrenchment compensation which was accepted by the petitioner without any protest. It is stated that other co-workmen had been re-engaged in the month of April, 2004 but petitioner had not joined duty at her own sweet will and the workers whose names mentioned in para No.7 were continuously worked with the respondent/department and they had completed more than 240 days in each calendar year and their service were regularized. It is further stated that persons mentioned in para No. 8 of statement of claim were engaged on compassionate grounds after approval of the govt. as their parents were expired. It is further submitted that 1087 workers were retrenched *w.e.f.* 7.7.2005 and thereafter they had been re-engaged and regularized as per court orders. Allegation of retrenching the petitioner in February, 2004 was emphatically denied although admitted that petitioner had filed demand notice in 2009 after about 5 years but never approached the respondent and the delay was not satisfactorily explained who was not entitled for any relief from the Court. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C, copy of retrenchment notice Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jai Pal Naik, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart Ex. RW1/B, copy of notice Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4.5.2018 for determination:

1. Whether termination of services of the petitioner by the respondent during February, 2004 is/was illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Relief : Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship between petitioner and respondent being workman and employer is not in dispute. It is not in dispute that petitioner had been engaged as daily waged beldar on muster roll basis. Mandays chart Ex. RW1/B on records shows that petitioner had been engaged in December, 1998 who worked for 20 days and in all 1693 days till February, 2004 and continued worked till February, 2004 when worked for 37 days. A bare glance at the mandays chart would show that petitioner had rendered more than 240 days service immediately preceding her termination in the month of February 2004 in which petitioner has merely worked for only 37 days but there is corresponding evidence led by the respondent establishing that petitioner was retrenched under Section 25-F of Act with a notice as well as compensation as reflected in notice under Section 25-F Ex. RW1/C. PW1 petitioner in cross-examination has specifically admitted to have received notice by respondent as well as payment of compensation. The petitioner in the witness box has reiterated her stand *qua* having been illegally terminated in violation of Section 25-F of the Act but certainly the respondent had complied the mandatory requirement of payment of compensation as well as issuance of notice as stated above. In such circumstances, the plea of respondent *qua* abandonment of job by the petitioner need not be discussed once it is established that respondent has complied with Section 25-F of the Act as stated above. Accordingly, it is held that respondent has not violated Section 25-F of the Act while retrenching service of petitioner.

12. In so far as violation of provisions of Section 25-G is concerned, suffice would to state here that RW1 Shri J.P. Naik, Executive Engineer, HPPWD Dharampur has specifically admitted in cross-examination that petitioner had worked as daily wager/beldar and workmen mentioned in para No. 7 of claim petition were junior to petitioner. The case of the petitioner remains that while retrenching, respondent had ignored mandate of Section 25-G of the Act which deals with the procedure for retrenchment required to be followed by employer which primarily based on doctrine of 'Last come First go' envisaged under Section 25-G of Act in the similarly situated workmen in which junior who has come last is to be disengaged first. In the case in hand, petitioner in para No. 7 of claim petition has named as Shashi Pal, Roshani Devi, Mamta Devi and Inder Singh who are shown to have joined later than petitioner terminated on 9.2.2004. Ex. PW1/B is the seniority list/year-wise mandays chart relating to one Shashi Kant had joined service in the month of January, 2000 when she merely worked for 31 days and continued to work till November, 2008. Similarly, the daily wager beldar transferred from Dharampur Division to Hamirpur Division on the basis of court order joined this Division on 1.8.2013 besides seniority list Ex. PW1/C shows name of Basant Singh who had joined on 5.8.2000. Certainly, junior to petitioner has been continuing in service whereas petitioner had been retrenched in violation of Section 25-G of Act by retaining junior as stated above and service of petitioner was terminated. For the applicability of Section 25-G, it is not required to be established that petitioner should have factually worked for more than 240 days under Section 25-F of Act in view of judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which it has been held that claimant/petitioner need not establish having worked for 240 days in a year preceding termination. Certainly in this case, petitioner has worked

for large number of days as reflected in mandays chart and had been illegally retrenched in violation of Section 25-G of Act.

13. In so far as allegation *qua* violation of Section 24-H of the Act is concerned, suffice would be to state here that petitioner in her claim petition in para No.8 has mentioned names of several workmen who have been engaged from 2008 to 2014 without affording an opportunity to petitioner for re-employment for which notice was to be given by respondent. In its reply respondent has alleged that all workmen as mentioned in para No. 8 of claim petition were engaged on compassionate ground after approval of the government. In such like situation, it was incumbent upon the respondent to have produced record of seniority list establishing that all the workmen mentioned in para No. 8 of claim petition were factually engaged on compassionate ground and if name of petitioner was factually reflected in seniority list maintained by respondent. In her claim petition, petitioner has asserted that respondent has not provided seniority list despite demand. In such like situation, it was obligatory on the part of the respondent to have filed seniority list which has not been done in this case. By not producing seniority list an adverse inference is to be drawn against respondent under Section 114 (g) of Indian Evidence Act and it cannot be held that workmen shown at para No. 8 had been appointed on compassionate ground. Even in view of judgment of **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union (AIR 2015 SC 1373)** for non production of seniority list by respondent/employer, the evidence was held to be interpreted in favour of petitioner. Accordingly, respondent is held to have violated Section 25-H of the Act as well.

14. Ld. Authorized Representative for petitioner has emphasized that consequent upon her illegal termination, petitioner has remained unemployed and was entitled for full back wages from the date of illegal termination. In support of her plea she has taken me through contents of claim petition as well as affidavit sworn by the petitioner. Ld. Dy. D.A. representing respondent/State on the other hand has taken me through cross-examination of petitioner in which petitioner has in unambiguous terms had admitted that she had cultivable land from which she had earning besides she also worked as labourer to earn her livelihood. That being so, it cannot be stated that petitioner was not gainfully employed as was required for entitlement of petitioner *qua* back wages.

15. Ld. Counsel/Authorized representative for the petitioner vehemently argued that petitioner was illegally terminated in February, 2004 who thereafter had approached the office of the Labour Officer, Mandi where sufficient time took place and the Labour Officer, Mandi had submitted failure report in the year 2009 in pursuance to which Labour Commissioner Shimla had referred petitioner's reference to Labour Court-cum-Industrial Tribunal for adjudication. on 10th November, 2016 and thereafter claim under Section 10 of Industrial Disputes Act was filed thus sufficient explanation has been given for the delay besides petitioner was unskilled labourer, fell in the category of beldar and had brought before Labour Officer, Mandi by issuing demand notice dated 26.9.2009. From February, 2004 to 2009, the petitioner claims to have approached various authorities who did not pay any heed to her request and from evidence on record delay is satisfactorily explained.

16. Ld. Dy. D.A. representing respondent/department has pointed out that retrenchment of petitioner in this case took place on February, 2004 and the industrial dispute was raised about 5½ years from date of retrenchment. Repudiating the argument advanced by Ld. Dy. D.A., Ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial

dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in her evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches.

17. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there exists an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue of the respondent more so when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination in this case is whether reference made at such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have been taken into consideration. In paragraph 23 sub-para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals

primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manually work for respondent. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment (**2016**) *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law. Ld. AR/counsel for the petitioner has contended that termination of petitioner has been made in violation of provisions of Industrial Disputes Act, 1947. The petitioner is liable to reinstated in service with full back wages. On the other hand ld. Dy. D.A. has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which criteria to be taken into consideration by Labour Court in awarding compensation has been laid down. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

18. I have gone through the judgment relied upon by ld. Dy. D.A. for respondent and of the view that judgment in Geetam Singh's case of (2013) does not apply to the case in hand in which Hon'ble Apex Court has laid down guidelines and factors to be considered by the Labour Court in cases involving violation of Industrial Disputes Act. In the case in hand before this Court, petitioner had promptly approached unlike in **Geetam Singh's** case when dispute was raised after six years and Hon'ble Apex Court instead of reinstatement of claimant/petitioner had awarded compensation but in the case in hand, demand notice was given to respondent after about 5 years besides delay was satisfactorily explained by petitioner as PW1. Since the judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)** had different facts particularly on delay in giving demand notice by petitioner before Hon'ble Apex Court after six years and the same does not apply in the case in hand. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for relief of reinstatement with other consequential benefits such as seniority and continuity in service instead of lump sum compensation. Issues No. 1 is decided in affirmative whereas issue No. 4 is decided in negative and issue No. 2 is decided as discussed and are answered accordingly.

Issue No. 3 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised. Issue is thus answered in negative in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service except back wages from date of demand notice 26.9.2009, leaving the parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 885/2016
Date of Institution : 13-12-2016
Date of Decision : 01-11-2018

Smt. Sheela Devi (legal heir) of Late Shri Budhi Singh, r/o Village Bheri, P.O. Sajao Piulu, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Late Shri Budhi Singh r/o Village Bheri, P.O. Sajao Piulu, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Dharampur, District Mandi, H.P. w.e.f. 08-07-2005 allegedly without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 5 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation Smt. Sheela Devi (Legal heir) widow of above aggrieved workman is entitled to from the above employer on account of service rendered by her late husband?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts narrated in the claim petition filed by petitioner (Smt. Sheela Devi widow of late Shri Budhi Singh) revealed that her husband was appointed by the respondent on daily wage basis *w.e.f.* November, 1998 on muster roll as beldar who continued to work till 8.2.2004 and thus completed 240 days in last 12 calendar months preceding his retrenchment on 9.2.2004. As such, service of late Budhi Singh husband of petitioner had been disengaged *w.e.f.* 9.2.2004 after paying retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity) due to surplus engagement on daily waged worker in HPPWD Dharampur Division. It is alleged that while retrenching petitioner's husband, principle of "Last come First go" was not followed as some junior workmen namely Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) had been retained in service and thus by retaining juniors and terminating service of petitioner deceased Budhi Singh who was senior manifestly violated provisions of Section 25-G of the Act. It is alleged that after termination of the services of petitioner's husband, so many workers had been appointed namely Pardeep Kumar (23.11.2007), Lekh Raj (11/2004) and Satya Devi (27.1.2011) but petitioner's husband has not been given any opportunity of re-employment or re-engagement. Averments made in the petition further revealed that retrenchment order dated 9.2.2004 concerning termination of several other workers working with deceased Budhi Singh has been set aside by the Hon'ble High Court of H.P. with directions to the respondent to reinstate all such workers with the seniority and continuity alongwith Rs. 50,000/- as back wages as lump sum compensation. It is also stated that order of Hon'ble High Court had not been assailed by the respondent and reinstated workmen in service in whose favour the Hon'ble High Court had passed the award however petitioner's husband was not reinstated and no opportunity of re-employment had been given by respondent and junior persons had been engaged. Feeling aggrieved with the action of respondent, the petitioner's husband had raised industrial dispute raising demand notice dated 3.8.2010 forwarding copy of demand notice to the Labour-cum-Conciliation Officer, Mandi who had tried to settle the dispute but the same could not be resolved *inter-se* the parties. The grievance of petitioner also remains that appropriate government had not referred dispute of petitioner's husband for adjudication to this Court and declined to refer the case for adjudication on the ground that case was not in existence and faded away with passage of time and no cause of action survived in favour of the petitioner. *Vide* order dated 16.11.2015 Hon'ble High Court of H.P. in CWP No. 4295/2015 had directed the Labour Commissioner to refer the dispute to Labour Court for adjudication. Similar case of one Sanjay Kumar was allowed by the Hon'ble High Court. It is claimed that dispute raised by petitioner is not on account of any delay but on account of circumstances beyond her control. Accordingly, petitioner prays for setting aside illegal retrenchment dated 9.2.2004 of deceased Budhi Singh with directions to the respondent to treat the services of petitioner's husband in continuous service till date of his death *i.e.* on 22.4.2007 and also prayed for full back wages, continuity in service, seniority and all other consequential benefits and also to consider the case of petitioner for employment on compassionate ground as per policy of the State Govt. and to any another relief petitioner is entitled to.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits, it is contended that petitioner's husband was engaged on November, 1998 and worked till February, 2004 when retrenchment was done in the same month after adopting codal formalities and at the time of retrenchment of deceased petitioner, respondent too had been given the retrenchment compensation as provided under Rules. Admitted that some junior daily wage workers namely Prabhu Ram, Shashi Pal and Roshani Devi had been attending the work regularly with the respondent/department besides that other workers namely Mamta Devi and Inder Singh had been engaged on compassionate grounds. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner during his life time was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove/tender examining Smt. Sheela Devi legal heir of deceased petitioner filed her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of mandays chart of Shashi Kant Ex. PW1/B, copy of RTI information dated 13.11.2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jai Pal Naik, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A and mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 03.1.2018 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent *w.e.f.* 08.07.2005 is/was illegal and unjustified? ...OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form? ...OPR.
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? ...OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1: Discussed

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Relief: Petition is partly allowed awarding lump sum compensation of Rs.1,80,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, Smt. Sheela Devi widow of late Shri Budhi Singh is one of the legal heirs of Budhi Singh who survive after his death and the reference of government received has named her as only legal heir. It is pertinent to mention here that claim petition before this Court was filed by Smt. Sheela Devi in which she has prayed for setting aside the retrenchment order dated 09.2.2004 *qua* her husband having been illegally terminated by respondent and sought direction to

the effect that services of petitioner's husband be treated as continuous service till his death *i.e.* on 22.4.2007 with full back wages. It has further been prayed that service of petitioner's husband be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service on compassionate ground as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that Budhi Singh was appointed on daily wage beldar basis with the respondent *w.e.f.* November, 1998 on muster roll who continued to work till 08.2.2004 when his service had been terminated after paying the retrenchment compensation under Section 25-F of the Act. It remains the case of petitioner that her husband had completed more than 240 days in each calendar year from 1998 to 2004 and that while retrenching the services of petitioner's husband principle of "Last come First go" was not followed by respondent as Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) were retained in service who were admittedly junior to deceased Budhi Singh husband of claimant/petitioner and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner's husband had worked for 107 days in the year 1998, 288 days in 1999, 238 ½ days in 2000, 164 days in 2001, 165 days in 2002, 198 ½ days in 2003 and 26 ½ days in 2004. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner's husband has factually worked for 39 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

13. In so far as violation of provisions of Section 25-H of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) were engaged between 1998 to 2003 when petitioner was alive. Be it stated that petitioner was illegally terminated on 8.2.2004 as per petitioner's claim. One Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed in November, 2004 when petitioner's husband was alive and not in job but was not given opportunity of re-employment which violates the provisions of Section 25-H of the Act.

14. Close scrutiny of the testimony of petitioner in cross-examination reveals that principle of "Last come First go" envisaged under Section 25-G of Act was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2004 and thereafter in 2005 several persons were engaged in service by respondent but petitioner has not given any opportunity for re-employment. Since the workmen mentioned in para 2 of claim petition had been appointed between 1998 to 2003 provisions of Section 25-G of the Act could be stated to have been violated had been established that junior to petitioner had been retained which could be proved by proving seniority list. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner's husband who was senior to persons mentioned and thus respondent had clearly violated the ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that her husband was arbitrarily in illegal manner terminated from service retained juniors. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G as well as Section 25-H of Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of Act. Issues are accordingly decided.

15. Ld. Authorized Representative/Counsel for petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2013 Latest HLJ (HP) 632 and 2012 LLR 770** in which the Hon'ble High Court has held that claim of compassionate ground could be adjudicated by the Labour Court. It has been rightly been contended by the ld. Dy. D.A. for State that ex-gratia, engagement on compassionate ground are to be decided by State govt. as per its policy of harness case are to be enforced for beneficiary by the government while considering the facts and circumstances of each case. It is nowhere stated that after the death of petitioner Budhi Singh, the legal heir of deceased petitioner had ever made any representation before the government rather there is no pleadings to this effect.

16. In so far as back wages is concerned, it has been contended that there is no authenticated evidence for entitlement of back wages however benefit of seniority, past service are to be given to the deceased petitioner till the time he was alive and accordingly terminal benefits to be worked out. Reliance has been placed on cross-examination of PW1 in which she admitted that she had cultivable land and other source of earning i.e. working as labourer. Certainly, deceased too had such income inference of which can be drawn from facts and circumstances. As such prior to his death he was held to be gainfully employed. Accordingly, the compassionate ground plea could not be decided by this Court as it is initially the government which is competent to pass such direction after evaluating the case of petitioner. Ld. Dy. D.A. for State also contended that deceased Budhi Singh himself had died and therefore there could be no question of his reinstatement. On the other hand, ld. Authorized Representative for petitioner has claimed seniority, past service benefits of deceased till he was alive. It is further held that plea of job to legal heirs of deceased Budhi Singh is not tenable till, it is established that representation for his service has been made before the government. As such, judgment **Latest HLJ 2013 (H.P.) 632** would not be attracted. It may be pertinent to mention here that taking into consideration the dependents of deceased Budhi Singh and time taken by in pursuing the matter by issuance of demand notice clearly establish delay in issuance of demand notice entitling petitioner for compensation in terms of judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. Applying the ratio of judgment aforesaid and that deceased petitioner Budhi Singh had rendered service for seven years but demand notice dated 03.8.2010 was made after a period of 5½ years, it would be appropriate if widow of deceased Budhi Singh who is petitioner/claimant before this court is awarded lump sum compensation of Rs.1,80,000/- (Rupees one lakh eighty thousand only). The judgments titled as **Anil Kumar Vs. Himachal Road Transport Corporation and another** reported in **Latest HLJ 2013(HP) 632** would not be applicable as it dealt with appointment on compassionate ground and not under any provisions of labour laws. Similarly, judgment reported in **2016 (151) FLR 762** titled as **Pawan Kumar Vs. District Manager, Deptt. of Telecom and Ors.** would also not be applicable as petitioner has failed to prove deceased Budhi Singh having worked for 240 days during his life time with respondent as required under provisions of Section 25-F of the Act. For the aforesaid reasons, issue No. 1 is decided in affirmative holding that deceased Budhi Singh was illegally terminated during his life time and other workmen working with him have been reinstated but deceased Budhi Singh could recourse to legally remedy of reinstatement and now his widow can certainly get lump sum compensation. Issues No. 1 and 3 are decided as discussed above.

Issue No. 4 :

17. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

18. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,80,000/- (Rupees one lakh eighty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits, exgratia as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization however, on receipt of compensation amount by petitioner. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.: 261/2016
Date of Institution: 03-05-2016
Date of Decision: 02-11-2018

Shri Tilak Raj s/o Shri Garib Dass, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur,
District Kangra, H.P.Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Tilak Raj s/o Shri Garib Dass, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during June, 1990 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 21 years *vide* demand notice dated 23.07.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in May, 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bharari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June, 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June, 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22.12.2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June, 1990 with prayer for being re-engaged in service with past seniority till re-engagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated

that petitioner had been disengaged in June, 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21.7.1994. It is stated that petitioner had worked intermittently *w.e.f.* November, 1986 till June, 1990 and left the work at his own sweet will however emphatically denied that petitioner has completed 240 days in each calendar year. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior i.e. petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial No. 1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial No. 1 to 24 in para No. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21.7.1994 Ex. RW1/C, copy of letter dated 18.8.1994 Ex. RW1/D and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 26.8.2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 23.07.2011 *qua* his termination of service during June, 1990 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent during June, 1990 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1: No

Issue No. 2: No

Issue No. 3 : Discussed

Issue No. 4: No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 2 and 3 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B petitioner is shown to have worked in the month of November, 1986 for a period of 62 days, 139 days in 1987, 185 days in 1988 and 104 days in 1990. As such, from mandays chart as aforesaid above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Tilak Raj, the petitioner has stepped into witness box has deposed on oath as maintained in claim petition. In cross-examination, he has admitted facts *qua* HPPWD Division Jassur existed in 1994 and thereafter HPPWD Jawali was made in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21.7.1994. In his affidavit Ex. PW1/A, petitioner has claimed to have worked from 1986 to June, 1990. RW1 Jagtar Singh, Executive Engineer, HPPWD, Jawali has denied this fact who clarified that according to their record petitioner had merely worked for 58 days. Otherwise also, in either situation, petitioner had not worked for 240 days. As such, uncorroborated testimony of petitioner could not be relied so as to hold that petitioner had factually worked for 240 days immediately prior to his termination in June, 1990 and in that situation, it was not necessary for respondent to have recourse to procedure envisaged under Section 25-F of the Act. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any other fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by respondent merits rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. Accordingly, it is held that respondent not violated Section 25-F of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as to who were the juniors working at the time of petitioner under Jawali Division or prior to it under Jassur Division who had been retained and petitioner has been terminated. In so far as allegation of petitioner contained in para No. 8 of affidavit is concerned, Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 but 24 others who joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen had been retained and petitioner was illegally terminated. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division on request and was posted at Sub-Division Suliali under Nurpur Division. As such, Smt. Kusum Lata had at no point of time had worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 8 of affidavit in Division Nurpur who neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act since petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under Section 25-F of the Act to the petitioner for re-employment. Be it stated that respondent in reply as well as on

oath RW1 has denied material facts *qua* engagement of Kusum Lata and 24 others as mentioned in para No. 8 of claim petition. As such, respondent is held to have neither violated Sections 25-G nor 25-H of the Act.

13. In so far as instead in reply filed by respondent, it has been categorically denied that Smt. Kusum Lata and 24 others had ever worked with Jassur Division. In so far as judgment titled as **State of Himachal Pradesh & another Vs. Partap Singh** reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286**, the same is not applicable in this case as petitioner has failed to establish that respondent had violated Section 25-G & 25-H of the Act. No other point was pressed or argued by ld. Counsel for petitioner and ld. Dy. D.A. representing respondent. No other point was pressed or argued by ld. Counsel for petitioner and ld. Dy. D.A. representing respondent.

14. In view of forgoing discussions, issue No. 2 is decided in negative holding that termination of service of petitioner by the respondent in June, 1990 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 4 :

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 1:

16. Ld. Counsel for the petitioner has relied upon judgment titled as **Inder Singh Vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reporter (Fortnightly) 487**, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Ld. Dy. D.A. for state has contended that there is long delay in this case unexplained. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the

benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

17. Enough has been emphasized by ld. Counsel for the petitioner that resolution had been sent by retrenched workmen to Registrar Hon'ble H.P. Administrative Tribunal in the year 1992 which has not been decided and nothing has been intimated to petitioner. Ld. Dy. D.A. on the other hand has argued that even if resolution so sent in 1992 as claimed had been sent by petitioner the same shall have no significance does not affect merits of case. Since petitioner has failed to establish violation of Section 25-F, 25-G and 25-H of the Act. Moreover, in view of settled provision of law that claim of petitioner cannot be defeated merely on ground of delay as has been discussed in foregoing paras.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

19. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 266/2016
 Date of Institution : 03-05-2016
 Date of Decision : 02-11-2018

Shri Subash Chand s/o Shri Dhani Ram, r/o Village Hada, P.O. Fatehpur, Tehsil Fatehpur,
 District Kangra (H.P.)*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Fatehpur, District Kangra, H.P.
*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Pankaj Bhardwaj, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh Subash Chand s/o Sh. Dhani Ram R.O. & Village Hada, P.O. Fatehpur, Tehsil Fathepur, Distt. Kangra, H.P. during 1986 by the Executive Engineer, HPPWD Fathepur Division, Tehsil Fatehpur, Distt. Kangra, H.P. who as worked as beldar on daily wages basis during the year 11/1983 to 1986 and has worked for 326 days in the year 1984, 272 days in 1985 and 13 days in 1986 respectively and has raised his industrial dispute *vide* demand notice dated 7/8/2013 after more than 26 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in May, 1981 in HPPWD Division Fatehpur, H.P. where several construction work was being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June, 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Fatehpur under mistaken plea had terminated service of petitioner in the month of June, 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent for his reengagement in service. It is alleged that after termination petitioner has remained unemployed who was not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 several verbal requests had been made to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured

to be engaged after three-four months but the respondent did not act upon assurance given to petitioner and thereafter a separate resolution on behalf of retrenched workers including that of petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied so far. It is claimed that for the purpose of seniority, petitioner and similarly situated daily waged workers whole of HPPWD constituted one unit and while terminating service of petitioner principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy, petitioner could not approach this court earlier. It is claimed that fresh hands had been retained who worked in HPPWD Sub Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 to implement award dated 22.12.2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated Section 25-F (a) (b) (c) of Industrial Disputes Act (hereinafter called 'Act' for brevity) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also maintained that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June, 1990 with prayer for being re-engaged in service with past seniority till re-engagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June, 1990 who had worked intermittently from 1983 till 1986 and left the work at his own sweet will however emphatically denied that petitioner had completed 240 days in each calendar year. Thus, setting up plea of abandonment, it is asserted that petitioner had merely worked for 44 days in the year 1983, 326 days in 1984, 272 days in 1985 and 13 days in 1986. It is alleged that persons at Sr. No.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial No.1 to 24 in para No. 8 of the claim petition were engaged under Nurpur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, Petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

8. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Mohinder Pal Dhiman, the then Executive Engineer, B&R Division HPPWD Fatehpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 26.8.2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 07.8.2013 *qua* his termination of service during year 1986 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent in the year 1986 is/was improper and unjustified as alleged? ...OPP.

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B, petitioner is shown to have worked from the year 1983 to 1986 who had worked for a period of 272 days in 1985 and 13 days in 1986 aggregating to 285 days in preceding 12 months immediately before termination. PW1 has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in claim petition besides he asserted to have worked from 1981 to June, 1990 but the documentary evidence produced by the respondent as stated above clearly established that petitioner did not work from 1981 rather he was engaged for the first time in the year 1983 when he worked for 44 days. No documentary evidence has been produced by petitioner which would show that petitioner had worked from 1981 to June, 1990. On the other hand, RW1 Shri Mohinder Pal Dhiman, Executive Engineer, HPPWD Fatehpur has specifically stated in cross-examination that petitioner had worked as shown in the mandays chart aforesaid which has also been relied upon by the respondent while leading evidence. In cross-examination, RW1 denied that service of petitioner had been engaged from 1981 to June, 1990 besides maintained that petitioner had worked for 655 days *w.e.f.* 1983 to 1986 however denied that person junior to petitioner had been engaged and that service of petitioner had been terminated by respondent.

12. The grievance of petitioner remains that respondent had not recourse to provisions of Section 25-F of the Act which required issuance of notice and payment of compensation in lieu of notice period besides reason for disengagement under Section 25-F (a) (b) and (c) of the Act if petitioner is found to have completed one years service even while applying Section 25-B of Act. As has come in the evidence, petitioner had worked for more than 240 days prior to his termination as discussed in foregoing para, it was required for respondent to have issued notice before terminating service of petitioner which has not done in this case. Be it stated that RW1 has admitted that no notice had been issued by him calling upon petitioner to resume duty. In so far as, plea of abandonment is concerned, same has to be proved like another fact in issue. It is admittedly not the case of respondent that any notice had been issued or compensation was paid in lieu thereof when

service of petitioner was terminated and as such, this court is left with no option but to hold that respondent had violated provisions of Section 25-F of the Industrial Disputes Act.

13. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. With regard to allegation of engagement of 24 workmen in different years as mentioned in affidavit as well as claim petition are not proved to have been engaged as no documentary evidence such as seniority list has been placed on record which would establish that these 24 workmen whose names have been mentioned in claim petition as well as affidavit were junior to petitioner. In absence of documentary evidence, it would be unsafe to hold that workmen junior to petitioner had been retained whereas service of petitioner had been terminated. As such, respondent cannot be stated to have violated provisions of Section 25-G of the Act.

14. No other point was pressed or argued by ld. Counsel for petitioner and Ld. Dy. D.A. representing respondent.

15. Ld. Counsel for petitioner has contended that after petitioner's termination in 1986, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked as a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as working as daily wager privately after his disengagement. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherfrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**". Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed even after his disengagement. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched by respondent without complying Section 25-F of Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed after his termination and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

16. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay of more than 20 years which disentitles petitioner relief claimed by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghbir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned

Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/ Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka [4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it

cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....”

(Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

17. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1986 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesigned judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of

Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I. D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the ld. Counsel as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 655 days as per mandays chart on record and that the services of petitioner were disengaged in 1986 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twenty six years i.e. demand notice was given on 7.8.2013**. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 52 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghbir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in

the year 2013 i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another** reported in AIR 2015 SC 3473. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in AIR 2016 SC 2984 titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. More so in view of observation *qua* facts made in judgment (2016) *supra*, claimant/ petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above said reasons, plea of delay and laches would not eclipse claim of petitioner.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 853/2016
 Date of Institution : 26-11-2016
 Date of decision : 13-11-2018

Shri Vinod Kumar s/o Shri Krishan Chand, r/o Village Ghugar Tanda, P.O. & Tehsil Palampur, District Kangra, H.P.Petitioner.

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh, Shimla.
 2. The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P.
-Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent (s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication :

“Whether alleged termination of services of Sh. Vinod Kumar s/o Sh. Krishan Chand, r/o Village & P.O. Ghugar Tanda, Tehsil Palampur, Distt. Kangra, H.P. from 31/3/2006 by (1) Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-171001. and (2) the Divisional Forest Officer, Forest Division, Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis from 1-12-1995 to 31/3/2006 and has raised his industrial dispute *vide* demand notice dated 10-4-2015 after more than 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll *w.e.f.* 1.12.1995 by

forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked alongwith petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the Government when State Government had taken decision to re-engage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by State Government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several Government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for re-engagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been re-engaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to re-engage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category-wise name of 169 daily waged worker of Kandi Project and IGCP Palampur alongwith written consent of these employees for their re-engagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. *i.e.* Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice *qua* his illegal termination forwarding a copy to conciliation officer. After receipt of failure

report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference No.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition No. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been re-engaged by respondent department who has been working as Class-IV on regular pay scale as Govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been re-engaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other Government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 1.4.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 1.4.2006 with further direction to respondent to re-engage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections *qua* maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go alongwith project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to re-engage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of letter dated 21.12.2004 Ex. PW1/B, copy of letter dated 1.1.2009 Ex. PW1/C, copy of letter dated 15.12.2009 Ex. PW1/D, copy of letter dated 3.12.2009 Ex. PW1/E, copy of letter dated 15.2.2006 Ex. PW1/F, copy of letter dated 29.2.2004 Ex. PW1/G, copy of letter dated 17.11.2008 Ex. PW1/H, copy of letter dated 2.1.2014

Ex. PW1/I, copy of letter dated 21.9.1994 Ex. PW1/J, copy of experience certificate of Shyam Lal Ex. PW1/K, copy of RTI information dated 4.1.2011 Ex. PW1/L, copy of RTI information dated 22.9.2014, 11.9.2014, 18.9.2014 Ex. PW1/M, copy of judgment dated 1.12.2009 Ex. PW1/N, copy of appeal order dated 28.2.2013 Ex. PW1/O, copy of RTI information dated 1.1.2014 Ex. PW1/P, copy of order of Bishan Dass dated 2.12.2008 Ex. PW1/Q, copy of RTI dated 14.8.2014 Ex. PW1/R, copy of reply to the demand notice Ex. PW1/S, copy of letter dated 20.2.2009, 12.5.2009 & 21.1.2009 Ex. PW1/T, copy of staff engaged as on 3.12.2009 Ex. PW1/U and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of notice dated 15.2.2006 Ex. RW1/C and closed evidence.

7. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed by on 18.10.2017 for determination.

1. Whether termination of the services of petitioner by the respondents *w.e.f.* 31.3.2006 is/was illegal and unjustified as alleged? ...OPR.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPR.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ...OPR.
9. Whether the claim petition is bad for non-joinder of necessary party as alleged? ...OPR.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1: Yes

Issue No. 2 : Discussed

Issue No.3 : Unpressed

Issue No.4 : No

Issue No. 5: Unpressed

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, H.P. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot re-engage petitioner without prior approval of Government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur Vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others Vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Vinod Kumar figures at serial No. 59 who is shown to have been appointed on 01.12.1995 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for 30 days in 1995, 247 days in 1996, 264 days in 1997, 327 days in 1998, 321 days in 1999, 345 days in 2000, 333 days in 2001, 330 days in 2002, 325 days in 2003, 276 days in 2004, 301 days in 2005

and 58 days in 2006. Be it noticed that petitioner had worked for more than 240 days ever since 1995 till 2006 immediately prior to his retrenchment. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll *w.e.f.* 01.12.1995 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent *vide* verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/F was issued *qua* one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco-Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner alongwith other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government nor forest department H.P. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/E stipulating therein about re-engagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue Department. Subsequently, letter dated 15.12.2009 Ex. PW1/D was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category-wise names of list of employees of Kandi project as well as IGCP Palampur for their written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010. It is evident from letter Ex. PW1/S dated 21.1.2010 of Divisional Forest Officer Palampur whereby petitioner was intimated about existence of various Government departments and that Joint Secretary (Forests) to the Govt. of H.P. *vide* letter dated 21.1.2010 has proposed to engage daily wage workers including petitioner. Thus, it seems that in the year 2010 through correspondence petitioner was assured *qua* absorption in other government departments however till raising of industrial dispute by petitioner and consequently receiving reference from the Labour Commissioner, petitioner was not absorbed or engaged in other govt. departments despite repeated assurances. Thus, the very fact that Government through its official agency was in touch with the petitioner for his case of absorption and engagement in Government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. Counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had

been regularized in pursuance to award dated 02.12.2008 passed in reference No.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department who was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award dated 2.12.2008 in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal filed by State Govt. of H.P. against judgment of Hon'ble High Court of H.P., award aforesaid passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para No. 11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being re-engaged in job with seniority and continuity in service as consequential relief.

15. It is also evident from evidence on record that IGCP Palampur was under the complete control of State Government as Project Director, Member Secretary of Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act besides authorized to do so by Chairman, Secretary (Forests) to the Govt. of H.P. It is evident from para No. 5 of the affidavit Ex. PW1/A which has remained unchallenged in cross-examination that IGCP Palampur was under the control of Divisional Forest Officer Palampur which was monitored by a high powered committee headed by Principal Chief Conservator of Forest. Thus, it establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through Government Officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as has come in evidence. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with the IGCP Palampur. Thus, even when IGCP Palampur was controlled through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were Govt. Officers as stated above it cannot be stated that the IGCP Palampur was a project on which the Government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. **However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur.** Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of re-engagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same, the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void *ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore

the order of termination would be void *ab-initio* as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para No. 22 of the judgment of (2013) that "*if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments*".

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para No. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched from service without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be re-engaged with seniority and in continuity in service. Issue No.1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* 1st April, 2006 was illegal and unjustified and the petitioner is entitled to be re-engaged alongwith seniority, past service benefits except back wages. Issues No. 1 and 2 are answered accordingly.

Issue No. 4 :

18. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 1.4.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., Ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the

principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as Government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in Govt. department, he was not offered any appointment or absorbed by the Government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Issues No. 3 & 5:

19. Both these issues were not pressed by ld. Dy. D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 760/2016
 Date of Institution : 18-11-2016
 Date of decision : 13-11-2018

Shri Balbir singh s/o Shri Duni Chand, r/o Village Lower Sidotu, P.O. Atyala Dai,
 Tehsil Palampur, District Kangra, H.P.Petitioner.

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh, Shimla.
 2. The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P.
-*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Balbir Singh s/o Sh. Duni Chand, r/o Village Lower Sihotu, PO Atyala Dai, Tehsil Palampur, Distt. Kangra, H.P. during 1/4/2006 by (1) The Principal Chief Conservator of Forests, Himachal Pradesh Shimla-1, & (2) the Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis *w.e.f.* 5/11/1998 to 31/3/2006 and has raised his industrial dispute *vide* demand notice dated 13/4/2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll *w.e.f.* 5.11.1998 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched alongwith petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and

void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked alongwith petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the Government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be re-engaged by state Government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for re-engagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been re-engaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the categorywise name of 169 daily waged worker of Kandi Project and IGCP Palampur alongwith written consent of these employees for their re-engagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice *qua* his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference No.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P. consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition No. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been re-engaged by respondent department who has been working as Class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent alongwith the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other Government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 1.4.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set

aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 1.4.2006 with further direction to respondent to re-engage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections *qua* maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go alongwith project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to re-engage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of letter dated 21.12.2004 Ex. PW1/B, copy of letter dated 1.1.2009 Ex. PW1/C, copy of letter dated 15.12.2009 Ex. PW1/D, copy of letter dated 3.12.2009 Ex. PW1/E, copy of letter dated 15.2.2006 Ex. PW1/F, copy of letter dated 29.2.2004 Ex. PW1/G, copy of letter dated 17.11.2008 Ex. PW1/H, copy of letter dated 2.1.2014 Ex. PW1/I, copy of letter dated 21.9.1994 Ex. PW1/J, copy of experience certificate of Shyam Lal Ex. PW1/K, copy of RTI information dated 4.1.2011 Ex. PW1/L, copy of RTI information dated 22.9.2014, 11.9.2014, 18.9.2014 Ex. PW1/M, copy of judgment dated 1.12.2009 Ex. PW1/N, copy of appeal order dated 28.2.2013 Ex. PW1/O, copy of RTI information dated 1.1.2014 Ex. PW1/P, copy of order of Bishan Dass dated 2.12.2008 Ex. PW1/Q, copy of RTI dated 14.8.2014 Ex. PW1/R, copy of letter dated 20.2.2006 Ex. PW1/S, copy of letter dated 20.2.2009 Ex. PW1/T copy of letter dated 12.5.2009 Ex. PW1/U, copy of letter dated 21.1.2010 Ex. PW1/V and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B. S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of notice dated 20.2.2006 Ex. RW1/C and closed evidence.

7. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed by on 05.9.2017 for determination.

1. Whether termination of the services of petitioner by the respondents *w.e.f.* 01.04.2006 is/was illegal and unjustified as alleged? ...OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad for non-joinder of necessary party as alleged? ..OPR.
5. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ..OPR.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : Unpressed

Issue No. 4 : Unpressed

Issue No. 5 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, H.P. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the

continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur Vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S. M. Nilkar and others Vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Balbir Singh figures at serial No. 83 who is shown to have been appointed on 5.11.1998 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for 47 days in 1998, 365 days in 1999, 362 days in 2000, 363 days in 2001, 365 days in 2002, 364 days in 2003, 245 days in 2004, 270 days in 2005 and 66 days in 2006. Be it noticed that petitioner had worked for more than 240 days ever since 1998 till 2006 immediately prior to his retrenchment. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll *w.e.f.* 5.11.1998 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent *vide* verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/F was issued *qua* one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination

that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco-Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner alongwith other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government nor forest department H.P. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/E stipulating therein about re-engagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue Department. Subsequently, letter dated 15.12.2009 Ex. PW1/D was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category-wise names of list of employees of Kandi project as well as IGCP Palampur for their written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010. It is evident from letter Ex. PW1/S dated 21.1.2010 of Divisional Forest Officer Palampur where by petitioner was intimated about existence of various government departments and that Joint Secretary (Forests) to the Govt. of H.P. *vide* letter dated 21.1.2010 has proposed to engage daily wage workers including petitioner. Thus, it seems that in the year 2010 through correspondence petitioner was assured *qua* absorption in other government departments however till raising of industrial dispute by petitioner and consequently receiving reference from the Labour Commissioner, petitioner was not absorbed or engaged in other Govt. departments despite repeated assurances. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. Counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award dated 02.12.2008 passed in reference No. 117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department who was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award dated 2.12.2008 in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal filed by State Govt. of H.P. against judgment of Hon'ble High Court of H.P., award aforesaid passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para No.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was re-engaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

15. It is also evident from evidence on record that IGCP Palampur was under the complete control of State Government as Project Director, Member Secretary of Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the

Societies Act besides authorized to do so by Chairman, Secretary (Forests) to the Govt. of H.P. It is evident from para No. 5 of the affidavit Ex. PW1/A which has remained unchallenged in cross-examination that IGCP Palampur was under the control of Divisional Forest Officer Palampur which was monitored by a high powered committee headed by Principal Chief Conservator of Forest. Thus, it establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through Government Officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as has come in evidence. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with the IGCP Palampur. Thus, even when IGCP Palampur was controlled through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were Govt. Officers as stated above it cannot be stated that the IGCP Palampur was a project on which the Government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. However, **Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur.** Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of re-engagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same, the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 22** titled as **Jasmer Singh Vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void *ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void *ab-initio* as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para No. 22 of the judgment of (2013) that "*if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments*".

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para No. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that

he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same". Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched from service without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be re-engaged with seniority and in continuity in service. Issue No.1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* 1st April, 2006 was illegal and unjustified and the petitioner is entitled to be re-engaged alongwith seniority, past service benefits except back wages. Issues No. 1 and 2 are answered accordingly.

Issue No. 5 :

18. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 1.4.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., Ld. Counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as Government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in Govt. department, he was not offered any appointment or absorbed by the Government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Issues No. 3 & 4 :

19. Both these issues were not pressed by ld. Dy. D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 798/2016
Date of Institution : 19-11-2016
Date of decision : 13-11-2018

Shri Desh Raj s/o Shri Prem Dass, r/o Village & Post Office Mansimbal (Remehar), Tehsil Palampur, District Kangra, H.P.Petitioner.

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh, Shimla.
2. The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P.
....Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent(s)	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Desh Raj s/o Sh. Prem Dass r/o V.P.O. Mansimbal (Remehar), Tehsil Palampur Distt. Kangra H.P. from 1/4/2006, by (1) the Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-1, 171001 and (2) The Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis during 1996 to 31/3/2006 and has raised his industrial dispute *vide* demand notice dated 25-5-2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/ management?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll *w.e.f.* 1996 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner alongwith other retrenched workmen consequent thereto approached the government when State Government had taken decision to re-engage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for re-engagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating

therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur alongwith written consent of these employees for their re-engagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11-2-2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice *qua* his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference No.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition No. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as Class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent alongwith the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 1.4.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to re-engage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections *qua* maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go alongwith project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject

to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of letter dated 21.12.2004 Ex. PW1/B, copy of letter dated 1.1.2009 Ex. PW1/C, copy of letter dated 15.12.2009 Ex. PW1/D, copy of letter dated 3.12.2009 Ex. PW1/E, copy of letter dated 15.2.2006 Ex. PW1/F, copy of letter dated 29.2.2004 Ex. PW1/G, copy of letter dated 17.11.2008 Ex. PW1/H, copy of letter dated 2.1.2014 Ex. PW1/I, copy of letter dated 21.9.1994 Ex. PW1/J, copy of experience certificate of Shyam Lal Ex. PW1/K, copy of RTI information dated 4.1.2011 Ex. PW1/L, copy of RTI information dated 22.9.2014, 11.9.2014, 18.9.2014 Ex. PW1/M, copy of judgment dated 1.12.2009 Ex. PW1/N, copy of appeal order dated 28.2.2013 Ex. PW1/O, copy of RTI information dated 1.1.2014 Ex. PW1/P, copy of order of Bishan Dass dated 2.12.2008 Ex. PW1/Q, copy of RTI dated 14.8.2014 Ex. PW1/R, copy of reply to demand notice Ex. PW1/S, Ex. copy of staff engaged as on 3.12.2009 Ex. PW1/U and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of notice dated 20.2.2006 Ex. RW1/C and closed evidence.

7. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed by on 18.10.2017 for determination.

1. Whether termination of the services of petitioner by the respondents *w.e.f. 01- 04-2006* is/was illegal and unjustified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ...OPR.
5. Whether the claim petition is bad for non-joinder of necessary party as alleged? ...OPR.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1: Yes

Issue No. 2 :	Discussed
Issue No. 3 :	Unpressed
Issue No. 4 :	Unpressed
Issue No. 5:	No
<i>Relief :</i>	Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/ workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot re-engage petitioner without prior approval of Government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur Vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Nilkar and others Vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish

that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B. S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Desh Raj figures at serial No. 64 who is shown to have been appointed on 26.10.1996 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for 66 days in 1996, 365 days in 1997, 365 days in 1998, 365 days in 1999, 242 days in 2000, 268 days in 2001, 353 days in 2002, 320 days in 2003, 316 days in 2004, 281 days in 2005 and 80 days in 2006. Be it noticed that petitioner had worked for more than 240 days ever since 1996 till 2006 immediately prior to his retrenchment. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll *w.e.f.* 26.10.1996 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent *vide* verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/F was issued *qua* one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco-Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner alongwith other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government nor forest department H.P. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/E stipulating therein about re-engagement of daily waged workers of IGCP Palampur as well as

Kandi Project as against 512 posts in Revenue Department. Subsequently, letter dated 15.12.2009 Ex. PW1/D was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for their written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010. It is evident from letter Ex. PW1/T dated 21.1.2010 of Divisional Forest Officer Palampur whereby petitioner was intimated about existence of various Government departments and that Joint Secretary (Forests) to the Govt. of H.P. vide letter dated 21.1.2010 has proposed to engage daily wage workers including petitioner. Thus, it seems that in the year 2010 through correspondence petitioner was assured qua absorption in other Government departments however till raising of industrial dispute by petitioner and consequently receiving reference from the Labour Commissioner, petitioner was not absorbed or engaged in other govt. departments despite repeated assurances. Thus, the very fact that Government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. Counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award dated 02.12.2008 passed in reference No.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department who was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award dated 2.12.2008 in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal filed by State Govt. of H.P. against judgment of Hon'ble High Court of H.P., award aforesaid passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para No.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was re-engaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being re-engaged in job with seniority and continuity in service as consequential relief.

15. It is also evident from evidence on record that IGCP Palampur was under the complete control of State Government as Project Director, Member Secretary of Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act besides authorized to do so by Chairman, Secretary (Forests) to the Govt. of H.P. It is evident from para No. 5 of the affidavit Ex. PW1/A which has remained unchallenged in cross-examination that IGCP Palampur was under the control of Divisional Forest Officer Palampur which was monitored by a high powered committee headed by Principal Chief Conservator of Forest. Thus, it establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as has come in evidence. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with the IGCP Palampur. Thus, even when IGCP Palampur was controlled through the Governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were Govt. Officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. **However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying**

award on behalf of IGCP Palampur. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of re-engagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same, the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh Vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void *ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void *ab-initio* as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para No. 22 of the judgment of (2013) that "*if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments*".

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para No. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the enduse being the same". Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched from service without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be re-engaged with seniority and in continuity in service. Issue No.1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* 1st April,

2006 was illegal and unjustified and the petitioner is entitled to be re-engaged alongwith seniority, past service benefits except back wages. Issues No. 1 and 2 are answered accordingly.

Issue No. 5:

18. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 1.4.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., Ld. Counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as Government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in Govt. department, he was not offered any appointment or absorbed by the Government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Issues No. 3 & 4:

19. Both these issues were not pressed by Ld. Dy. D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 315/2015
 Date of Institution : 16-07-2015
 Date of Decision : 15-11-2018

Shri Hans Raj s/o Shri Mast Ram, r/o Village Bandli, P.O. Rakol, District Mandi, H.P.
Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Lalit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Hans Raj s/o Shri Mast Ram, r/o Village Bandli, P.O. Rakol, District Mandi, H.P. during February, 2000 to February, 2013 and finally during March, 2013 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent in 2004 at Forest Division Sunder Nagar, District Mandi, H.P. who completed 240 days in each calendar year. It further transpires from the claim petition that respondent during service period of petitioner had been giving fictional breaks so that he did not complete 240 days so as to become eligible for regularization in terms of Government policy. It is

claimed that termination of petitioner is in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity) as respondent did not give one month's notice or one month's wages in lieu thereof or any retrenchment compensation while terminating service of petitioner. It is further alleged that workmen junior to petitioner namely Jai Lal, Madan Lal, Smt. Sita Devi, Ramesh Kumar, Mast Ram, as per seniority list prepared by respondent as on 30.11.2011 were engaged after petitioner and thereafter were retained in service and later their service were regularized by respondent/department and as such action of respondent/department in engaging workers after terminating petitioner was in violation of Section 25-G & 25-H of Act. Accordingly, petitioner prays for setting aside termination order and regularizing period of breaks from 2000 to 2013.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination in March, 2013 having become infructuous as petitioner was working intermittently after 2013 with the respondent. On merits admitted that petitioner was engaged in Jhugi Forest Range, Suket Forest Division in the month of December, 2000 to carryout seasonal forestry work who worked intermittently upto February, 2016 subject to availability of work and funds as was also evident from mandays chart. It has been emphatically denied that petitioner was engaged by respondent in 1998 rather petitioner was engaged as daily waged casual labourer on requirement of work with the respondent. It is alleged that no fictional breaks had been given as the petitioner used to come and work of his own sweet will and that petitioner had completed 240 days and was eligible to regularization as per Government policy. It is also stated that question of completing 240 days did not apply for the period 2002 to 2008, 2010 to 2012 as petitioner did not fulfill condition envisaged under Section 25 of Act before and said reason, respondent was not required to issue any notice or pay any retrenchment compensation as claimed by petitioner. It is denied that petitioner was given fictional breaks deliberately rather petitioner of his own had left the job. Accordingly, it is contended that petitioner had not completed 240 days in any year who was working even after year 2013 for which the reference has been received and as such claim petition is liable to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.3.2018 for determination which are as under:

1. Whether time to time termination of the services of petitioner during December, 2000 to February, 2013 by the respondent is illegal and unjustified as alleged? ...OPP.
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? ...OPP.
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? ...OPP.
4. Whether the present claim petition is not maintainable in the present form as alleged? ...OPR.

5. Whether the claim petition has become infructuous as alleged. If so, its effect? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 to 3 and 5 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B relating to petitioner which reveals that in 2000 petitioner had worked for 10 days, 112 days in 2001, 8 days in 2002, 10 days in 2009, 13 days in 2013, 76 days in 2014, 85 days in 2015 and 12 days in 2016. It is evident from the mandays chart that petitioner had worked in the month of **January & February, 2016** whereas reference *qua* termination relates to month of **March, 2013**. It is evident from the mandays chart that in the year 2013 petitioner had merely worked for 13 days and thereafter in the year 2014 he had worked in different months collectively for 76 days however in 2015 he had worked for 85 days. Since the allegation of termination relates to specific period *i.e.* March, 2013, it can be observed that in the year 2013, petitioner had worked only for 13 days and had not at all worked in 2010 to 2012. As such, by no stretch of imagination, it can be concluded that petitioner had been terminated in violation of Section 25-F of Act as petitioner had not at all completed 240 days in preceding 12 months as was required to be established for him for proving violation *qua* termination in 2013. That being so, respondent did not commit any illegality in not issuing any notice or pay compensation as required under Section 25-F (a) and (b) of Act. In the witness box, petitioner has sworn in affidavit Ex. PW/A who has admitted that petitioner was engaged in December, 2000 whereas in the claim petition he has asserted to have been engaged in the year 2004. Thus, from his own testimony claim of having been engaged in 2004 gets falsified. With regard to fictional breaks from 2003 to 2013 petitioner has denied that he had only worked in the month of August, 2009 but this has no relevance in view of fact that reference of termination relates to month of March, 2013. In any case there is no reliable evidence on the point of petitioner having worked for 240 days in all the year he worked with respondent.

12. In so far as allegation of intermittent break deliberately given by the respondent to petitioner is concerned, it would be relevant to refer to testimony of RW1 Shri Suneet Bhardwaj, DFO Suket Forest Division Sunder Nagar who happens to sole witness in affidavit denied allegation of petitioner besides proving mandays chart Ex. RW1/B. Ex. R1 seniority list tendered to petitioner in cross-examination relates to labourers as on 30.11.2011 which shows that several

worker had been engaged in the year 2000 and thereafter till 2009 workmen namely Khum Chand and Kamal Chand who are stated to have been given fictional breaks. Even otherwise, from seniority list Ex. R1 no inference of anyone to have been appointed after disengagement of petitioner could be raised calling upon petitioner to join in service can be drawn. It is evident from evidence on record that plea of intermittent breaks having been given by respondent could not be raised irrespective of fact that respondent has not proved abandonment of job by petitioner as no evidence has been adduced establishing that petitioner had ever been given any notice when ever he had been absented from job recurrently.

13. With regard to violation of Section of 25-H, reliance has been placed upon Ex. R1 seniority list which although shows name of Madan Lal, Jai Lal, Smt. Sita Devi, Ramesh Kumar & Mast Ram to have been engaged later *i.e.* in the year 2002 and thereafter 2006 but does not establish that they were continuing when petitioner was allegedly terminated in March, 2013 or say thereafter in February, 2016. Moreover, petitioner had not at all worked for several years from 2003 to 2008. In such circumstances, it is held that respondent had not violated Section 25-G of Act. Since mandays chart Ex. RW1/B shows petitioner to have worked in January & February, 2016, it could not be stated that he had been illegally terminated in March, 2013 and for said reason the workers mentioned in the claim petition to have been retained which also corresponds that seniority list does not establish plea of petitioner *qua* violation of Section 25-G of the Act in March, 2013. In view of foregoing discussion, issues No. 1 and 2 are answered in negative in favour of respondent and against the petitioner as issue No. 3 is decided as discussed above. Issue No. 5 is decided in favour of respondent holding that claim petition has become infructuous per reference received from appropriate Govt. with regard to final termination of service of petitioner who had been terminated from service in March, 2013 however it is evident from mandays chart Ex. RW1/B on records which establishes that petitioner had worked till 2017. That being so plea of final termination of service of petitioner in the month of March, 2013 had not been established. Issue No. 5 is decided in affirmative in favour of respondent.

Issue No. 4 :

14. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

15. As a sequel to my findings on foregoing issues No. 1 to 5, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 312/2016
 Date of Institution : 16-07-2015
 Date of Decision : 15-11-2018

Shri Sita Ram s/o Shri Moti Ram, r/o Village Dhanu, P.O. Rakol, District Mandi, H.P.
....Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Lalit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Sita Ram s/o Shri Moti Ram, r/o Village Dhanu, P.O. Rakol, District Mandi, H.P. during February, 2000 to February, 2013 and finally during March, 2013 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent in 1998 at Forest Division Sunder Nagar, District Mandi, H.P. who completed 240 days in each calendar year. It further transpires from the claim petition that respondent during service period of petitioner had been giving fictional breaks so that he did not complete 240 days so as to become eligible for regularization in terms of government policy. It is alleged that one Khub Chand s/o Jiva Nand and Kamal Chand who had been given fictional breaks were later terminated but they had obtained award in their favour from Labour Court and later service of these two workers were regularized. It is claimed that termination of petitioner is in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity) as respondent did not give one month's notice or one month's wages in lieu thereof or any retrenchment compensation while terminating service of petitioner. It is further alleged that workmen junior to petitioner namely Jai Lal, Madan Lal, Smt. Sita Devi, Ramesh Kumar, Mast Ram, as per seniority list prepared by respondent as on 30.11.2011 were engaged after petitioner and thereafter were retained in service and later their service were regularized by respondent/department and as such action of respondent/department in engaging workers after

terminating petitioner was in violation of Section 25-G & 25-H of Act. Accordingly, petitioner prays for setting aside termination order and regularizing period of breaks from 2000 to 2013.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination in March, 2013 having become infructuous as petitioner was working intermittently after 2013 with the respondent. On merits admitted that petitioner was engaged in Jhugi Forest Range, Suket Forest Division in the month of February, 2000 to carryout seasonal forestry work who worked intermittently upto February, 2016 subject to availability of work and funds as was also evident from mandays chart. It has been emphatically denied that petitioner was engaged by respondent in 1998 rather petitioner was engaged as daily waged casual labourer on requirement of work with the respondent. It is alleged that no fictional breaks had been given as the petitioner used to come and work of his own sweet will and that petitioner had completed 240 days and was eligible to regularization as per Government policy. It is also stated that question of completing 240 days did not apply for the period 2003 to 2008, 2010 to 2012 as petitioner did not fulfill condition envisaged under Section 25 of Act before and said reason, respondent was not required to issue any notice or pay any retrenchment compensation as claimed by petitioner. It is denied that petitioner was given fictional breaks deliberately rather petitioner of his own had left the job. Accordingly, it is contended that petitioner had not completed 240 days in any year who was working even after year 2013 for which the reference has been received and as such claim petition is liable to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.3.2018 for determination which are as under:

1. Whether time to time termination of the services of petitioner during Feb., 2000 to February, 2013 by the respondent is illegal and unjustified as alleged? ...OPP.
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? ...OPP.
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? ...OPP.
4. Whether the present claim petition is not maintainable in the present form as alleged? ...OPR.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: Yes
<i>Relief</i>	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 to 3 and 5 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B relating to petitioner which reveals that in 2000 petitioner had worked for 205 days, 186 days in 2001, 90 days in 2002, 25 days in 2009, 12 days in 2013, 71 days in 2014, 127 days in 2015 and 13 days in 2016. It is evident from the mandays chart that petitioner had worked in the month of **January & February, 2016** whereas reference *qua* termination relates to month of **March, 2013**. It is evident from the mandays chart that in the year 2013 petitioner had merely worked for 12 days and thereafter in the year 2014 he had worked in different months collectively for 71 days however in 2015 he had worked for 127 days. Since the allegation of termination relates to specific period *i.e.* March, 2013, it can be observed that in the year 2013, petitioner had worked only for 12 days and had not at all worked in 2010 to 2012. As such, by no stretch of imagination, it can be concluded that petitioner had been terminated in violation of Section 25-F of Act as petitioner had not at all completed 240 days in preceding 12 months as was required to be established for him for proving violation *qua* termination in 2013. That being so, respondent did not commit any illegality in not issuing any notice or pay compensation as required under Section 25-F (a) and (b) of Act. In the witness box, petitioner has sworn in affidavit Ex. PW/A who has admitted that petitioner was engaged in February, 2000 whereas in the claim petition he has asserted to have been engaged in the year 1998. Thus, from his own testimony claim of having been engaged in 1998 gets falsified. With regard to fictional breaks from 2003 to 2013 petitioner has denied that he had only worked in the month of August, 2009 but this has no relevance in view of fact that reference of termination relates to month of March, 2013. In any case there is no reliable evidence on the point of petitioner having worked for 240 days in all the year he worked with respondent.

12. In so far as allegation of intermittent break deliberately given by the respondent to petitioner is concerned, it would be relevant to refer to testimony of RW1 Shri Suneet Bhardwaj, DFO Suket Forest Division Sunder Nagar who happens to sole witness in affidavit denied allegation of petitioner besides proving mandays chart Ex. RW1/B. Ex. R1 seniority list tendered to petitioner in cross-examination relates to labourers as on 30.11.2011 which shows that several worker had been engaged in the year 2000 and thereafter till 2009 workmen namely Khum Chand and Kamal Chand who are stated to have been given fictional breaks. Even otherwise, from seniority list Ex. R1 no inference of anyone to have been appointed after disengagement of petitioner could be raised calling upon petitioner to join in service can be drawn. It is evident from evidence on record that plea of intermittent breaks having been given by respondent could not be raised irrespective of fact that respondent has not proved abandonment of job by petitioner as no

evidence has been adduced establishing that petitioner had ever been given any notice when ever he had been absented from job recurrently.

13. With regard to violation of Section of 25-H, reliance has been placed upon Ex. R1 seniority list which although shows name of Madan Lal, Jai Lal, Smt. Sita Devi, Ramesh Kumar & Mast Ram to have been engaged later *i.e.* in the year 2002 and thereafter 2006 but does not establish that they were continuing when petitioner was allegedly terminated in March, 2013 or say thereafter in February, 2016. Moreover, petitioner had not at all worked for several years from 2003 to 2008. In such circumstances, it is held that respondent had not violated Section 25-G of Act. Since mandays chart Ex. RW1/B shows petitioner to have worked in January & February, 2016, it could not be stated that he had been illegally terminated in March, 2013 and for said reason the workers mentioned in the claim petition to have been retained which also corresponds that seniority list does not establish plea of petitioner *qua* violation of Section 25-G of the Act in March, 2013. In view of foregoing discussion, issues No. 1 and 2 are answered in negative in favour of respondent and against the petitioner as issue No. 3 is decided as discussed above. Issue No. 5 is decided in favour of respondent holding that claim petition has become infructuous per reference received from appropriate Govt. with regard to final termination of service of petitioner who had been terminated from service in March, 2013 however it is evident from mandays chart Ex. RW1/B on records which establishes that petitioner had worked till 2017. That being so plea of final termination of service of petitioner in the month of March, 2013 had not been established. Issue No. 5 is decided in affirmative in favour of respondent.

Issue No. 4 :

14. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

15. As a sequel to my findings on foregoing issues No. 1 to 5, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 250/2015

Date of Institution : 16-06-2015

Date of Decision : 15-11-2018

Shri Partap Singh s/o Shri Kishori Lal, r/o Village Dhanu, P.O. Rakol, District Mandi, H.P.
....*Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Sh. Lalit Thakur, Adv.
For the Respondent	:	Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to termination of the services of Shri Partap Singh s/o Shri Kishori Lal, r/o Village Dhanu, P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during August, 2009 to February, 2013 and finally during March, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent in 2003 at Forest Division Sunder Nagar, District Mandi, H.P. who completed 240 days in each calendar year. It further transpires from the claim petition that respondent during service period of petitioner had been giving fictional breaks so that he did not complete 240 days so as to become eligible for regularization in terms of Government policy. It is claimed that termination of petitioner is in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity) as respondent did not give one month's notice or one month's wages in lieu thereof or any retrenchment compensation while terminating service of petitioner. It is further alleged that workmen junior to petitioner namely Jai Lal, Madan Lal, Smt. Sita Devi, Ramesh Kumar, Mast Ram, as per seniority list prepared by respondent as on 30.11.2011 were engaged after petitioner and thereafter were retained in service and later their service were regularized by respondent/department and as such action of respondent/department in engaging workers after terminating petitioner was in violation of Section 25-G & 25-H of Act. Accordingly, petitioner prays for setting aside termination order and regularizing period of breaks from 2000 to 2013.

4. The respondent contested the claim petition, filed reply inter-alia taken preliminary objections of maintainability, reference regarding final termination in March, 2013 having become

infructuous as petitioner was working intermittently after 2013 with the respondent. On merits admitted that petitioner was engaged in Jhugi Forest Range, Suket Forest Division in the month of August, 2009 to carryout seasonal forestry work who worked intermittently upto 2015 subject to availability of work and funds as was also evident from mandays chart. It has been emphatically denied that petitioner was engaged by respondent in 2003 rather petitioner was engaged as daily waged casual labourer on requirement of work with the respondent. It is alleged that no fictional breaks had been given as the petitioner used to come and work of his own sweet will and that petitioner had completed 240 days and was eligible to regularization as per Government policy. It is also stated that question of completing 240 days did not apply for the period 2010 to 2012 as petitioner did not fulfill condition envisaged under Section 25 of Act before and said reason, respondent was not required to issue any notice or pay any retrenchment compensation as claimed by petitioner. It is denied that petitioner was given fictional breaks deliberately rather petitioner of his own had left the job. Accordingly, it is contended that petitioner had not completed 240 days in any year who was working even after year 2013 for which the reference has been received and as such claim petition is liable to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, copies of bills of petitioner Ex. RW1/B1 to Ex. B15 and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.3.2018 for determination which are as under:

1. Whether time to time termination of the services of petitioner during August, 2009 to February, 2013 by the respondent is illegal and unjustified as alleged? ...OPP.
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? ...OPP.
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? ...OPP.
4. Whether the present claim petition is not maintainable in the present form as alleged? ..OPR.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? ...OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

- | | |
|-------------|-------------|
| Issue No. 1 | : No |
| Issue No. 2 | : No |
| Issue No. 3 | : Discussed |

Issue No. 4 : No

Issue No. 5 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 to 3 and 5 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to bill vouchers Ex. RW1/B1 to B15 relating to petitioner which reveals that in 2009 petitioner had worked for 25 days, 12 days in 2013, 13 days in 2014 and 176 days in 2015. It is evident from the Ex. RW1/B1 to Ex. RW1/B16 that petitioner had worked in the year 2015 whereas reference *qua* termination relates to month of **March, 2013**. It is evident from the mandays chart that in the year 2013 petitioner had merely worked for 12 days and thereafter in the year 2014 he had worked in different months collectively for 13 days however in 2015 he had worked for 176 days. Since the allegation of termination relates to specific period *i.e.* March, 2013, it can be observed that in the year 2013, petitioner had worked only for 13 days and had not at all worked in 2010 to 2012. As such, by no stretch of imagination, it can be concluded that petitioner had been terminated in violation of Section 25-F of Act as petitioner had not at all completed 240 days in preceding 12 months as was required to be established for him for proving violation *qua* termination in 2013. That being so, respondent did not commit any illegality in not issuing any notice or pay compensation as required under Section 25-F (a) and (b) of Act. In the witness box, petitioner has sworn in affidavit Ex. PW/A who has admitted that petitioner was engaged in the year 2009 whereas in the claim petition he has asserted to have been engaged in the year 2003. Thus, from his own testimony claim of having been engaged in 2004 gets falsified. With regard to fictional breaks from 2003 to 2013 petitioner has denied that he had only worked in the month of August, 2009 but this has no relevance in view of fact that reference of termination relates to month of March, 2013. In any case there is no reliable evidence on the point of petitioner having worked for 240 days in all the year he worked with respondent.

12. In so far as allegation of intermittent break deliberately given by the respondent to petitioner is concerned, it would be relevant to refer to testimony of RW1 Shri Suneet Bhardwaj, DFO Suket Forest Division Sunder Nagar who happens to sole witness in affidavit denied allegation of petitioner besides proving mandays chart Ex. RW1/B. Ex. R1 seniority list tendered to petitioner in cross-examination relates to labourers as on 30.11.2011 which shows that several worker had been engaged in the year 2000 and thereafter till 2009 workmen namely Khub Chand and Kamal Chand who are stated to have been given fictional breaks. Even otherwise, from seniority list Ex. R1 no inference of anyone to have been appointed after disengagement of petitioner could be raised calling upon petitioner to join in service can be drawn. It is evident from evidence on record that plea of intermittent breaks having been given by respondent could not be raised irrespective of fact that respondent has not proved abandonment of job by petitioner as no evidence has been adduced establishing that petitioner had ever been given any notice when ever he had been absented from job recurrently.

13. With regard to violation of Section of 25-H, reliance has been placed upon Ex. R1 seniority list which although shows name of Madan Lal, Jai Lal, Smt. Sita Devi, Ramesh Kumar & Mast Ram to have been engaged later *i.e.* in the year 2002 and thereafter 2006 but does not establish that they were continuing when petitioner was allegedly terminated in March, 2013 or say

thereafter in the year 2015. Moreover, petitioner had not at all worked for several years from 2003 to 2008. In such circumstances, it is held that respondent had not violated Section 25-G of Act. Since Ex. RW1/B1 to Ex. B15 shows petitioner to have worked in the year 2015, it could not be stated that he had been illegally terminated in March, 2013 and for said reason the workers mentioned in the claim petition to have been retained which also corresponds that seniority list does not establish plea of petitioner *qua* violation of Section 25-G of the Act in March, 2013. In view of foregoing discussion, issues No. 1 and 2 are answered in negative in favour of respondent and against the petitioner as issue No.3 is decided as discussed above. Issue No. 5 is decided in favour of respondent holding that claim petition has become infructuous per reference received from appropriate govt. with regard to final termination of service of petitioner who had been terminated from service in March, 2013 however it is evident from Ex. RW1/B1 to B15 on records which establishes that petitioner had worked till 2015. That being so plea of final termination of service of petitioner in the month of March, 2013 had not been established. Issue No. 5 is decided in affirmative in favour of respondent.

Issue No. 4 :

14. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

15. As a sequel to my findings on foregoing issues No. 1 to 5, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of November, 2018.

Sd/-

(K. K. SHARMA),

Presiding Judge,

*Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 517/2015

Date of Institution : 21-11-2015

Date of Decision : 20-11-2018

Smt. Meena d/o Shri Guman Nath w/o Shri Khem Raj, r/o Village and Post Office Rei,
Tehsil Pangi, District Chamba, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar Tehsil Pangi, District Chamba, H.P.
....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Meena d/o Shri Guman Nath w/o Shri Khem Raj, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 30.03.2012 regarding her alleged illegal termination of services during October, 2003 suffers from delay and laches? If not, whether termination of the services of Smt. Meena d/o Shri Guman Nath w/o Shri Khem Raj, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. After the receipt of the above stated reference, a corrigendum dated 9th March, 2018 was received from the appropriate Government which reads as under:

“Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. *vide* notification of even No. dated 31-10-2015 for its legal adjudication. However, inadvertently the correct facts could not be mentioned about the date of termination in the said notification. Therefore, the same may be read as 'year 2005' instead of 'October, 2003'.

3. On receipt of reference from appropriate Government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 2000 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous

services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 2000, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. She further prayed for reinstatement in service *w.e.f.* month of October, 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 2000 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1.1.2009 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

5. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2003 who remained worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2003 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her

termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

6. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

7. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D, copy of notice Ex. PW1/E, copy of muster rolls Ex. P-A to Ex. P-D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

8. I have heard the ld. Counsel of petitioner and ld. Dy. D. A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 24.4.2016 and issues No. 1 & 2 recasted and were framed on 4.10.2018 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* her termination of service during year, 2005 by respondent suffers from the vice of delay and laches as alleged? ...OPP.
2. Whether the termination of service of petitioner by the respondent during year 2005 is/was illegal and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP
4. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B as well muster rolls Ex. PA to PD coupled with pleadings of respondent that petitioner had worked from 2003 till October, 2004 whereas the claimant/petitioner alleges that she had worked from 2000 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 2003 till October, 2004 and not from 2000 upto October, 2005. Admittedly, the reference of appropriate Govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

13. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 2003 to October, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

14. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work

intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

15. A bare glance on the mandays chart Ex. RW1/B as well as muster rolls Ex. PA to PD would reveal that petitioner had worked for 23 days in the year 2003 and 46 days in 2004 and thus in her total service from 2003 to 2004 in 02 years as she had worked for 69 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B as well as muster-rolls Ex. PA to PD that in the year 2004, the petitioner had merely worked for 46 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

16. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2003 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2003 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/ petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

17. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/ petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for violation

of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

18. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment where from income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

19. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghbir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the

industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/ Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S. M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka [4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute inspite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case,

the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

20. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

21. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. Her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

22. Repudiating the arguments by ld. Dy. D.A. for the State, ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul Vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghbir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another Vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in

case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

23. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (*2013 supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 69 days as per mandays chart & muster rolls on record and that the services of petitioner were disengaged in 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years i.e.** demand notice was given on 30.3.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghbir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Id. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. More so in view of observation qua facts made in judgment (**2016 supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

24. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of

compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

25. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

26. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Chamba)**

Ref. No. 380/16

Smt. Nain Dei w/o Sh. Gajinder Singh, Village Kuthah, P.O. Dharwas, Tehsil Pangi, Distt. Chamba, H.P.Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D./I&PH, Killar(Pangi), Distt. Chamba,
H.P.Respondent..

21-11-2018 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.32 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

21-11-2018 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or her ld. Csl. today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:

21-11-2018

Sd/-
(K. K. SHARMA),
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Chamba)**

Ref.: No. 352/16

Smt. Guddi Devi w/o Shri Shambhu Ram, r/o Village Thandal, P.O. Purthi, Tehsil Pangi,
Distt. Chamba, H.P.Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D./I&PH, Killar(Pangi), Distt. Chamba,
H.P.Respondent.

21-11-2018 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

21-11-2018 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or her ld. Csl. today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:

21-11-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 580/2015

Date of Institution : 04-12-2015

Date of Decision : 21-11-2018

Shri Jagdish Chand s/o Shri Charan Dass, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangi,
District Chamba, H.P.Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar (Pangi), District Chamba, H.P.
....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. O. P. Bhardwaj, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Jagdish s/o Shri Charan Dass, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated nil received in the Labour Office Chamba on 31-10-2011 regarding his alleged illegal termination of services of worker Shri Jagdish s/o Shri Charan Dass, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during August, 2002, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 9th March, 2018 was received from the appropriate government which reads as under:

“Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. *vide* notification of even No. dated 20-11-2015 for its legal adjudication. However, inadvertently the correct facts could not be mentioned about the date of termination in the said notification. Therefore, the same may be read as “year 2003” instead of “October, 2002”.

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1992 who continuously worked till October, 2003 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the

provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Gurdev who appointed in 1994, Sher Singh in 1996, Jai Dass in 1998, Tek Chand in 1999, Baldev in 2000, Trilok Chand in 2002 and Hari Ram in 2003. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2003. He further prayed for reinstatement in service *w.e.f.* month of October, 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1992 to October, 2003 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1.1.2002 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

5. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained worked till 2002 intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2002 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

7. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/ proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

8. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 18.5.2016 and issues No.1 & 2 recasted and were framed on 4.10.2018 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service during year, 2003 by respondent suffers from the vice of delay and laches as alleged? .OPP.
2. Whether the termination of service of petitioner by the respondent during year 2003 is/was illegal and unjustified as alleged? .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? .OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? .OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief. : Petition is partly allowed awarding lump sum compensation of Rs.1,75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or

settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1992 till October, 2002 whereas the claimant/petitioner alleges that he had worked from 1992 to October, 2003. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till October, 2002 and not upto October, 2003. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

13. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1992 to October, 2002. he has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2002 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

14. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any

specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

15. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 189 days in the year 1992, 176 days in 1993, 167 days in 1994, 178 days in 1995, 111 days in 1996 154 days in 1997, 142 days in 1998, 106.5 days in 1999, 165 days in 2000, 124 days in 2001 and 112 days in 2002 and thus in his total service from 1992 to 2002 in 11 years as he had worked for 1624.5 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2002, the petitioner had merely worked for 112 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

16. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1992 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

17. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

18. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 2002, he had remained unemployed and was not earning anything thereafter as such was entitled

for full back wages. Repudiating the arguments of ld. Counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A. R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherfrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

19. Lastly, ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghbir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/ Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....”

(Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part

of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

20. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2002 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

21. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

22. Repudiating the arguments by ld. Dy. D.A. for the State, ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar**

Paul Vs. BSNL & another reported in AIR 2015 SC 357 wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in AIR 2014 SC (Supp) 121, **Raghbir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in 2014(3) **Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another** reported in AIR 2015 SC 3473. It has been contended that engagement of claimant/ petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment AIR 2015 SC *supra*, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in 2016 (1) **Him. L.R. 502** titled as **State of Himachal Pradesh and another Vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In 2014 (3) **Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/ petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of AIR 2015 SC 1373 titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

23. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the

judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (*2013 supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 1624.5 days as per mandays chart & muster-rolls on record and that the services of petitioner were disengaged in 2002 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** i.e. demand notice was given on 31.10.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghbir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (**2016 supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

24. In view of foregoing discussion, a lump-sum compensation of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

25. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

26. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 553/2016

Date of Institution : 24-8-2016

Date of Decision : 24-11-2018

Shri Sadiq Mohammad s/o Shri Shahiddeen, r/o Village Nihad, P.O. Aund, Tehsil Nurpur,
 District Kangra, H.P.Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.
 . .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Sadiq Mohammad s/o Shri Shahiddeen, r/o Village Nihad, P.O. Aund, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13.6.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked in construction of road leading to Bod to Chakki, defence road Nurpur Hospital Road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be

engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:

1. Whether the industrial dispute raised by the petitioner *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of the services of petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form? . .OPR

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1985 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1985 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that

he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforestated who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari**

(MS), it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 1 has become redundant which is decided accordingly.

Issue No. 4 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-

(K. K. SHARMA),

Presiding Judge,

*Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 270/2016

Date of Institution : 04.5.2016

Date of Decision : 24.11.2018

Shri Sulinder Kumar s/o Shri Jagat Ram, r/o Village and Post Office Jaunta, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Sulinder Kumar s/o Shri Jagat Ram, r/o Village and Post Office Jaunta, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) the Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) the Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked as daily wages worker and has raised his industrial dispute after more than 20 years *vide* demand notice dated-nil- received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter

called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 i.e. Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record i.e. retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen i.e. Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with reengagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Balbir Singh, Rumal Singh, Bazir Singh in construction of road leading to Boadh to Chakki Dhar road, Jatoli to Indora garat etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court i.e. AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had

filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.
2. Whether termination of the services of petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? ..OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1980 till 1990 and thus prima facie there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1980 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex. PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex. RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. vide which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner

had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed as Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1980 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 1 has become redundant which is decided accordingly.

Issue No. 4 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 832/2016

Date of Institution : 24-11-2016

Date of Decision : 24-11-2018

Shri Mohan Lal s/o Shri Som Raj, r/o Village Jaldi, P.O. Taragarh, Tehsil Chowari, District Chamba, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Mohan Lal s/o Shri Som Raj, r/o Village Jaldi, P.O. Taragarh, Tehsil Chowari, District Chamba, H.P. during year, 1990 by (1) The

Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 23 years *vide* demand notice dated-nil-received on 04.03.2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1988 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No.2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Kewal Singh, Suresh Kumar in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital roads etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21.7.1994. It has been

emphatically denied that petitioner had worked with respondent from 1988 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 26 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.10.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents in the year 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.

4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1988 till 1990 and thus prima facie there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1988 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1986 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1986 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1986 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1988 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1

has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed as Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of "Last come First go" envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was sine qua non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1988 to 1990 and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT CHAMBA)**

Ref. No. : 552/2016

Date of Institution : 24-8-2016

Date of Decision : 24-11-2018

Shri Rakesh Kumar s/o Shri Ghorkhu Ram, r/o Village and Post Office Chougan, Ward No.3, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.
. .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Rakesh Kumar s/o Shri Ghorkhu Ram, r/o Village and Post Office Chougan, Ward No. 3, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 22 years *vide* demand notice dated-nil-received on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1986 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metallised road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been reengaged and names of 24

workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Kabli, Thuru Ram, Prithi Ram in construction of leading to Defence road, Kopra to Aund etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A,

copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, office order dated 19-8-1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05-8-2017 for determination which are as under:

1. Whether the industrial dispute raised by the petitioner *vide* demand notice dated nil qua his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of the services of petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1986 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five

years from 1986 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1986 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1986 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1980 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1986 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1986 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of

Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1986 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue no.1 has become redundant which is decided accordingly.

Issue No. 4 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT CHAMBA)**

Ref. No. : 828/2016

Date of Institution : 24-11-2016

Date of Decision : 24-11-2018

Shri Luknu Ram s/o Shri Bhoia Ram, r/o Village and Post Office Danni, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Luknu Ram s/o Shri Bhoia Ram, r/o Village and Post Office Danni, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 29-11-2012, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, legal and

justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1986 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been reengaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with reengagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of roads besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1986 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P.

however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 26 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18, workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, office order dated 19-8-1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-10-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents in the year 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

<i>Issue No. 2</i>	: Discussed
<i>Issue No. 3</i>	: Yes
<i>Issue No. 4</i>	: Discussed
<i>Relief</i>	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1986 till 1990 and thus prima facie there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1986 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1986 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1986 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1986 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1986 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was sine qua non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1986 to 1990 and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3 :

15. Id. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that

petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT CHAMBA)**

Ref. No. : 554/2016

Date of Institution : 24-8-2016

Date of Decision : 24-11-2018

Shri Krishan Chand s/o Shri Sarno Ram, r/o Village and Post Office Dhanni, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Krishan Chand s/o Shri Sarno Ram, r/o Village and Post Office Dhanni, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daili wages and has raised his industrial dispute after more than 21 years *vide* demand notice dated-nil-received on 29-11-2012, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Manohar Lal, Ramesh Chand, Vijay Kumar in construction of road leading to Boadh to Chakki Dhar road, Nurpur Hospital Road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also

made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, office order dated 19-8-1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05-8-2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of services of the petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1985 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1985 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that

he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari**

(MS), it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (supra) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 1 has become redundant which is decided accordingly.

Issue No. 4 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT CHAMBA)**

Ref. No. : 827/2016

Date of Institution : 24-11-2016

Date of Decision : 24-11-2018

Shri Surjit Singh s/o Shri Kehar Singh, r/o Village and Post Office Kopra, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Surjit Singh s/o Shri Kehar Singh, r/o of Village and Post Office Kopra, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 23 years *vide* demand notice dated-nil-received on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1986 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in

lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been reengaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Kuldeep Singh, Kartar Singh, Kabli, Joginder Singh etc. in construction of road leading to Defence road, Bod to Chakki Dhar etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification no. PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1986 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was

junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule-4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, office order dated 19-8-1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-10-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.
Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1986 till 1990 and thus prima facie there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1986 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1986 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1986 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No.3 of claim petition and para No.2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had

been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1986 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues no.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp AT Chamba)**

Ref. No. : 820/2016

Date of Institution : 24-11-2016

Date of Decision : 24-11-2018

Shri Kashmir Singh s/o Shri Rura Ram, r/o Village and P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. .Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Kashmir Singh s/o Shri Rura Ram, r/o Village and P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. during 1990 by (i) The Executive Engineer, Nurpur Division, HPPWD Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division, HPPWD, Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 23 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala on 04-03-2013 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1988 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No.2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Kewal Singh, Suresh Kumar etc. in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents

department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1988 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18, workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, office order dated 19-8-1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the Id. Counsel of petitioner and Id. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 07-10-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.

4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1988 till 1990 and thus prima facie there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1988 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1988 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the

evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1988 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as *such plea* with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on

record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was sine qua non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1988 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue no.4 has become redundant which is decided accordingly.

Issue No. 3 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 806/2016

Date of Institution : 24-11-2016

Date of Decision : 24-11-2018

Shri Sher Mohammad s/o Shri Gulamdeen, r/o Village and P.O. Kharod, Tehsil Nurpur,
District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Sher Mohammad s/o Shri Gulamdeen, r/o Village and P.O. Kharod, Tehsil Nurpur, District Kangra, H.P. during 1990 by (i) The Executive Engineer, Nurpur Division, HPPWD, Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division, HPPWD, Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 21 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala on 29-11-2012 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 i.e. Executive

Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Budhi Singh, Charan Dass etc. in construction of road leading to Defence road, Bod, Chakki Dhar etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar

Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, office order dated 19-8-1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-10-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

- | | |
|-------------|--|
| Issue No. 1 | : No |
| Issue No. 2 | : Discussed |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Discussed |
| Relief | : Claim petition is dismissed per operative part of Award. |

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner

was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as

mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was sine qua non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues no. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.
18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.
19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 558/2016

Date of Institution : 24-8-2016

Date of Decision : 24-11-2018

Shri Baldev Singh s/o Shri Kaka Ram, r/o Village and Post Office Hatli Jamwalan, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Baldev Singh s/o Shri Kaka Ram, r/o Village and Post Office Hatli Jamwalan, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District

Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13-6-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1986 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been reengaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para no.3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with reengagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of roads besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1986 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240

days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, office order dated 19-8-1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-10-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents in the year 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.
Relief.
9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1986 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1986 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1986 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1986 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1986 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent no.1 had not engaged petitioner as claimed by him from 1986 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that junior workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was sine qua non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1986 to 1990 and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No.	: 557/2016
Date of Institution	: 24-8-2016
Date of Decision	: 24-11-2018

Shri Roop Singh s/o Shri Inga Ram, r/o Village Aund Tikka Par Nala, P.O. Aund, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Roop Singh s/o Shri Inga Ram, r/o Village Aund Tikka Par Nala, P.O. Aund, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1986 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with reengagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked in construction of roads besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not

approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1986 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.10.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was improper and unjustified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1986 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1986 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1986 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1980 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of

petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1986 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1986 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. vide which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case

of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1986 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

16. As a sequel to my findings on foregoing issues no.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)

Ref. No. : 560/2016

Date of Institution : 24-8-2016

Date of Decision : 24-11-2018

Shri Mahinder Singh s/o Shri Baso Ram, r/o Village and Post Office Kotplahari, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Mahinder Singh s/o Shri Baso Ram, r/o Village and Post Office Kotplahari, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) the Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) the Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 21 years *vide* demand notice dated-nil-recived on 29-11-2012, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in

lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Relu Ram and Suresh Kumar in construction of road leading to Jatoli road, Hatli road Nurpur, road, Nurpur Hospital Road, Defence road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was

junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.10.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

- | | |
|------------|--|
| Issue No.1 | : No |
| Issue No.2 | : Discussed |
| Issue No.3 | : Yes |
| Issue No.4 | : Discussed |
| Relief | : Claim petition is dismissed per operative part of Award. |

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus prima facie there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1985 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1985 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that junior workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali

Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue no.4 has become redundant which is decided accordingly.

Issue No. 3 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.
18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.
19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 559/2016

Date of Institution : 24-8-2016

Date of Decision : 24-11-2018

Shri Surat Singh s/o Shri Girdhari Lal, r/o Village Karthada, P.O. Badhuin, Tehsil Nurpur,
District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Surat Singh s/o Shri Girdhai Lal, r/o Village Karthada, P.O. Badhuin, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra,

H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 23 years *vide* demand notice dated-nil-received on 04.03.2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, legal and justified? If not, keeping in view of delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1986 who continued to work under HPPWD Sub-Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been reengaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked in construction of roads leading to Defence road, Suliali to Chakki road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1986 to 1990 rather petitioner

had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 26 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.10.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents in the year 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1986 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1986 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1986 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1986 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1986 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1986 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any

notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforestated who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1986 to

1990 and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 623/2016

Date of Institution : 01-9-2016

Date of Decision : 24-11-2018

Shri Ramesh Chand s/o Shri Gian Chand, r/o Village Thana, P.O. Gurchal, Tehsil Nurpur,
District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.
. .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ramesh Chand s/o Shri Gian Chand, r/o Village Thana, P.O. Gurchal, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1987 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No.2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors

retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with reengagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked in construction of roads leading to defence road, Bod to Chakki Road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R

Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:

1. Whether the industrial dispute raised by the petitioner *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.
2. Whether termination of the services of petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? ..OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

- | | |
|-------------|--|
| Issue No. 1 | : Discussed |
| Issue No. 2 | : No |
| Issue No. 3 | : Discussed |
| Issue No. 4 | : Yes |
| Relief | : Claim petition is dismissed per operative part of Award. |

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1987 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner

was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1987 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1986 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1980 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1987 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1987 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforestated who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been

retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1987 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.1 has become redundant which is decided accordingly.

Issue No. 4 :

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
 (Camp at Chamba)**

Ref. No. : 479/2016

Date of Institution : 22-8-2016

Date of Decision : 24-11-2018

Shri Milap Chand s/o Shri Gian Chand, r/o Village Keyod Garian, P.O. Chowki, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Milap Chand s/o Shri Gian Chand, r/o Village Keyod Garian, P.O. Chowki, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman,

is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1978 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Rattan Chand, Girdhari, Swaran & Suresh in construction of road leading to Hatli to Chowki, Chowki to Ladori, Nagrota to chowki, Banotu to Hatli, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94, dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24

were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 05-8-2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.
2. Whether termination of the services of petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? ..OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: Yes
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1978 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1978 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without depositing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1978 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1978 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur

but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1978 to

1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 1 has become redundant which is decided accordingly.

Issue No. 4 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT CHAMBA)**

Ref. No. : 478/2016

Date of Institution : 22.8.2016

Date of Decision : 24.11.2018

Shri Sukhdev Singh s/o Shri Bhindu Ram, r/o Village Thana, P.O. Gurchal, Tehsil Nurpur,
District Kangra, H.P. . Petitioner.

Versus

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1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

 2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.
. Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Sukhdev Singh s/o Shri Bhindu Ram, r/o Village Thana, P.O. Gurchal, Tehsil Nurpur, District Kangra, H.P. during year 1990 by (1) The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 21 years *vide* demand notice dated-nil-received on 29.11.2012, without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 i.e. Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record i.e. retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen i.e. Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged

in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Bod to Chakkidhar etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94, dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy

of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:—

1. Whether the industrial dispute raised by the petitioner, *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of the services of petitioner by the respondents during the year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form? . .OPR.

Relief.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five

years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as

mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.1 has become redundant which is decided accordingly.

Issue No. 4:

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.
19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.
20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT CHAMBA)**

Ref. No. : 499/2016

Date of Institution : 22-8-2016

Date of Decision : 24-11-2018

Shri Maggar Singh s/o Shri Dalku Ram, r/o Village and Post Office Aundh, Tehsil Nurpur,
District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Maggar Singh s/o Shri Dalku Ram, r/o Village and Post Office Aundh, Tehsil Nurpur, District Kangra, H.P. by (1) The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The

Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been reengaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having

worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:

1. Whether the industrial dispute raised by the petitioner, *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of the services of petitioner by the respondents during the year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form? . .OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him

from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para no.3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was

sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.1 has become redundant which is decided accordingly.

Issue No. 4 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
 (Camp at Chamba)**

Ref. No. : 476/2016

Date of Institution : 22-08-2016

Date of Decision

: 24-11-2018

Shri Sham Singh s/o Shri Sahib Singh, r/o Village Haddal Chikli, P.O. Haddal, Tehsil Chowari, District Chamba, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Sham Singh s/o Shri Sahib Singh, r/o Village Haddal Chikli, P.O. Haddal, Tehsil Chowari, District Chamba, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of after about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that

aforestated work was also of perennial nature. It is claimed that respondent No.2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar

Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 07.10.2017 for determination which are as under:—

1. Whether termination of the services of petitioner by the respondents during the year, 1990 is/was improper and unjustified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any

specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such,

Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed as Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.
19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.
20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No.	: 475/2016
Date of Institution	: 22-8-2016
Date of Decision	: 24-11-2018

Shri Subhash Chand s/o Shri Parkash Chand, r/o Village Bag Bandera, P.O. Karasani Pull, Tehsil Chowari, District Chamba, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Subhash Chand s/o Shri Parkash Chand, r/o Village Bag Bandera, P.O. Karasani Pull, Tehsil Chowari, District Chamba, H.P. during

year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 23 years *vide* demand notice dated-nil-received on 04.03.2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1988 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 i.e. Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record i.e. retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen i.e. Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court i.e. AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94 dated 21.7.1994. It has been

emphatically denied that petitioner had worked with respondent from 1988 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 07.10.2017 for determination which are as under:—

1. Whether termination of the services of petitioner by the respondents during the year, 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1988 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1988 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1988 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him

from 1988 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No.3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise

which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1988 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue no.4 has become redundant which is decided accordingly.

Issue No. 3 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 500/2016

Date of Institution : 22-8-2016

Date of Decision : 24-11-2018

Shri Fakardeen s/o Shri Kadar Deen, r/o Village Khajjan Basa, P.O. Sadwan, Tehsil Nurpur,
District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Fakardeen s/o Shri Kadar Deen, r/o Village Khajjan Basa, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1983 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive

Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked in construction of road leading to Jatoli road, Defence road, Simbli road, Thora road, Pandrehar road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar

Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 05-8-2017 for determination which are as under:—

1. Whether industrial dispute raised by the petitioner, *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of the services of petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form? . .OPR.

Relief.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1983 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any

specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1983 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1983 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1983 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such,

Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed as Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of "Last come First go" envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine qua non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, *respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.*

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1983 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 1 has become redundant which is decided accordingly.

Issue No. 4 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.
19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.
20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No.	: 556/2016
Date of Institution	: 24.8.2016
Date of Decision	: 24.11.2018

Shri Ashok Kumar s/o Shri Hakam Singh, r/o Village and Post Office Khanni, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ashok Kumar s/o Shri Hakam Singh, r/o Village and Post Office Khanni, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra,

H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 21 years *vide* demand notice dated-nil-received on 04.03.2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified? If not, keeping in view of delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1980 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent no.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Naresh Sharma, Harbans Lal, Bhudhi Singh etc. in construction of road leading to Nagawari to Simbli, defence road, Aund to Chakki etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94, dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1980 to 1990 rather petitioner

had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 07.10.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

10. For the reasons detailed here-under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Discussed

Issue No.3 : Yes

Issue No.4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1980 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1980 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1980 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1980 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1980 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1980 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any

notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1980 to

1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue no.4 has become redundant which is decided accordingly.

Issue No. 3 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT CHAMBA)**

Ref. No. : 477/2016

Date of Institution : 22-8-2016

Date of Decision : 24-11-2018

Shri Kesar Singh s/o Shri Shango Ram, r/o Village and Post Office Jaunta, Tehsil Nurpur,
District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.
. Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Kesar Singh s/o Shri Shango Ram, r/o Village and Post Office Jaunta, Tehsil Nurpur, district Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1978 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and

that petitioner had worked with Kushal Singh, Sukh Dev, Beli Ram and Naresh Kumar in construction of road leading to Jaunta Mastgarh road, Suliali to Chakki road, Dammi to Anuhi road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94, dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1986 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of

notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 07.10.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Discussed

Issue No.3 : Yes

Issue No.4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1987 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1987 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division

Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1978 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1978 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1978 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1978 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation

to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1978 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
 (Camp at Chamba)**

Ref. No. : 416/2016

Date of Institution : 27-6-2016

Date of Decision : 24-11-2018

Shri Uttam Chand s/o Shri Ram Saran, r/o Village Batrah, P.O. Khanni, Tehsil Nurpur,
 District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Uttam Chand s/o Shri Ram Saran, r/o Village Batrah, P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 22 years *vide* demand notice dated-nil-received on 04.03.2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 22 years in raising the industrial

dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1988 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 i.e. Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record i.e. retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen i.e. Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court i.e. AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94, dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P.

however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:

1. Whether industrial dispute raised by the petitioner, *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of the services of petitioner by the respondents during year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form? . .OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: Yes
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1988 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1988 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1988 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1988 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by

respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed as Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1988 to

1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 1 has become redundant which is decided accordingly.

Issue No. 4 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 405/2016

Date of Institution : 27-6-2016

Date of Decision : 24-11-2018

Shri Labhu Ram s/o Shri Relu Ram, r/o Village Kot-Plahari, P.O. Kot, Tehsil Nurpur,
District Kangra, H.P. . Petitioner.

Versus

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1. The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P.

 2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.
. Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Labhu Ram s/o Shri Relu Ram, r/o Village Kot-Plahari, P.O. Kot, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated-nil-received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 20 years in raising the industrial dispute, what amount of back wages seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1978 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been reengaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and

that petitioner had worked under several mates in construction of road leading to Nagrota to Ladoli road, Chowki road, Malkual to Simbli, Jatoli road, Hatli road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94, dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1978 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D,

office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 07.10.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondents during the year, 1990 is/was improper and unjustified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1978 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1978 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur

Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1978 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1978 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No.2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained

and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3:

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 404/2016

Date of Institution : 27-6-2016

Date of Decision : 24-11-2018

Shri Kash Mohammad s/o Shri Swarli (Subarli), r/o Village Nihad, P.O. Aund, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Kash Mohammad s/o Shri Swarli (Subarli), r/o Village Nihad, P.O. Aund, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman,

is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Balbir Singh, Rumal Singh, Bazir Singh in construction of road leading to Boadh to Chakki Dhar road, Jatoli to Indora garat etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94, dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24

were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of the services of petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form? . .OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: Yes
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3:

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur

but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 1 has become redundant which is decided accordingly.

Issue No. 4 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 421/2016

Date of Institution : 27-6-2016

Date of Decision : 24-11-2018

Shri Sher Singh s/o Shri Mangat Ram, r/o Village and Post Office Jaunta, Tehsil Nurpur,
District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.
. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Sher Singh s/o Shri Mangat Ram, r/o Village and Post Office Jaunta, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1986 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and

others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Ram Singh, Sudershan, Jagdish etc. in construction of road leading to Bod to Jasur, Nurpur to Badwar national highway etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali vide Govt. Notification no.PBW-(A) A (1) 17/94, dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1

tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:

- . Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
- 2. Whether termination of the services of petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? . .OPP.
- 3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
- 4. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.

Relief.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : No

Issue No.3 : Discussed

Issue No.4 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five

years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para no.3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been

engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue no.1 has become redundant which is decided accordingly.

Issue No. 4 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 423/2016

Date of Institution : 27-6-2016

Date of Decision : 24-11-2018

Shri Ashok Kumar s/o Shri Hoshiyar Singh, r/o Village and Post Office Haddal, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ashok Kumar s/o Shri Hoshiyar Singh, r/o Village and Post Office Haddal, Tehsil Nurpur, District Kangra, H.P. during year, 1990 (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute

after about 21 years *vide* demand notice dated-nil- received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1987 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94, dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24

were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of the services of petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1987 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1987 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1987 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD

Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of

notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1987 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 1 has become redundant which is decided accordingly.

Issue No. 4 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No.	: 414/2016
Date of Institution	: 27-6-2016
Date of Decision	: 24-11-2018

Shri Sham Sunder s/o Shri Karam Chand, r/o Village and Post Office Khanni, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P. *. Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Sham Sunder s/o Shri Karam Chand, r/o Village and Post Office Khanni, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) the Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P. , who had worked on daily wages and has raised his industrial dispute after more than 22 years *vide* demand notice dated-nil-received on 04.03.2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors

retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked with Kewal Singh, Kabli Ram, Som Dutt in construction of road leading to Defence road, Suliali to Chakki road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/rename as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94, dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reassured that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Purshotam Lal as PW2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer,

B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:

1. Whether the industrial dispute raised by the petitioner vide demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of the services of petitioner by the respondents in the year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form? . .OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : Yes

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his

service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. Version of PW1 has been supported by PW2 Shri Purshotam Lal, a retired official of the HPPWD Division Nurpur but he appears to be highly interested witness being from village of the petitioner. Even otherwise, also no weightage can be given to testimony of PW2 on oath on the point of petitioner having remained engaged from 1987 to 1990 as firstly on the ground that this witness was engaged as beldar in 1986 in Nurpur Division whereas petitioner was engaged in 1985 prior to engagement of PW1 who had no occasion to know if petitioner was factually engaged in 1985 and secondly PW2 has admitted in cross-examination that whenever any beldar/workman was engaged by respondent, his attendance was invariably marked. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in

favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter reemployment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 1 has become redundant which is decided accordingly.

Issue No. 4 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 258/2016

Date of Institution : 03-5-2016

Date of Decision : 24-11-2018

Shri Kishan Bahadur s/o Shri Dubel Singh, r/o Village Khajjan, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Kishan Bahadur s/o Shri Dubel Singh, r/o Village Khajjan, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated-nil-received on 13.06.2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman,

is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1983 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25.5.2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No. 1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked in construction of road leading to Khajjan Jatoli, Haddal Maira, mamuh, Gurchal etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No.PBW-(A) A (1) 17/94, dated 21.7.1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to June, 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No. 1 to 24

were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25.5.2010 in pursuance to various Awards of this court passed on 22.12.2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

7. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A as well as petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of office order dated 29.11.2010 Ex. RW1/D, office order dated 19.8.1998 regarding Smt. Kusum Sharma (Store Clerk) Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18.1.2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H and closed evidence.

8. I have heard the ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 05.8.2017 for determination which are as under:

1. Whether industrial dispute raised by the petitioner, *vide* demand notice dated nil *qua* his termination of service during year 1990 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .OPP.
2. Whether termination of the services of petitioner by the respondents during year 1990 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form? . .OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: Yes
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1983 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1983 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1983 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster-rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No. 1 had not engaged petitioner as claimed by him from 1983 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur

but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29.11.2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

13. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Id. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22.12.2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board Vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1983 to

1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 1 has become redundant which is decided accordingly.

Issue No. 4 :

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 27/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Pawan Kumar s/o Shri Lala Ram, r/o village Phagala, P.O. Maloh, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Pawan Kumar s/o Shri Lala Ram, r/o Village Phagala, P.O. Maloh, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during January 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1996 as daily waged beldar in Dehar Sub-Division who continuously worked till 2001 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not re-engaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits

denied that petitioner had worked with the respondent/department from 1998 to 1999 however, clarified that petitioner had merely worked only for 19 days in month of December, 1998 and 130 days in the year 1999 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for re-engagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 4156/2015 and Hon'ble High Court of H.P. *vide* order dated 15.10.2015 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during January, 2001 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs. 35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 149 days from 1998 to 1999. It can be noticed that in 1998 petitioner has merely worked for 19 days and in year 1999 petitioner has worked for 130 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1998 whose service had been terminated in 2001. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from December 1998 to December 1999 and was not terminated in 2001 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2009 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in December 1999 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest

from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for re-employment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25- H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 149 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after above 08 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for re-engagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPPC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld.

Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about two years and actually worked for 149 days as per mandays chart on record and that the services of petitioner were disengaged in 1999 who worked as non Skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years i.e.** demand notice was given 18.11.2009. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 49 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner

would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25** (SC) and for said reason judgment of Hon'ble High Court titled as *Naginder Kumar Vs. HPSEB* dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by Id. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 35,000/- (Rupees thirty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT CHAMBA)**

Ref. No. : 28/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Karam Singh s/o Shri Gurduttu Ram, r/o Village Khanoud, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Karam Singh s/o Shri Gurduttu Ram, r/o Village Khanoud, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during October 1997 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1996 as daily waged beldar in Dehar Sub-Division who continuously worked till 1997 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not re-engaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi

Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department in 1997 however, clarified that petitioner had merely worked only for 79 days in the year 1997 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for re-engagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2009 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however qua earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-1-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during October, 1997 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.

3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs. 20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 79 days in 1997. It can be noticed that in 1997 petitioner has merely worked for 79 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked in 1997 and was not worked upto 1998 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2009 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by

respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in December 1997 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for re-employment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25- H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 79 days and from 1997 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no iota of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1997 and the industrial dispute was raised after above 12 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for re-engagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C

Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforeslated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of

Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about one year and actually worked for 79 days as per mandays chart on record and that the services of petitioner were disengaged in 1997 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** i.e. demand notice was given 18.11.2009. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 43 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as *Naginder Kumar Vs. HPSEB* dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by Id. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
 (Camp at Chamba)**

Ref. No.	: 30/2016
Date of Institution	: 20-1-2016
Date of Decision	: 27-11-2018

Shri Mahajan Singh s/o Shri Sunder Singh, r/o Village Sanithan, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. . .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Sunder Singh Sippy, AR
For the Respondent	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Mahajan Singh s/o Shri Sunder Singh, r/o Village Sanihan, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during July 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Dehar Sub-Division who continuously worked

till 1998 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not reengaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department from 1997 to 1998 however, clarified that petitioner had merely worked only for 65 days in the year 1997 and 73 days in the year 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for re-engagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however qua earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during July, 1998 is/was improper and unjustified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs. 30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 138 days from 1997 to 1998. It can be noticed that in 1997 petitioner has merely worked for 65 days and in year 1998 petitioner has worked for 73 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from October 1997 to July 1998. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment

procedure envisaged under section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in July 1998 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster-roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25-H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 149 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no iota of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to

petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 12 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for re-engagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforesated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's case** reported in **2013 (136) FLR**

893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (*2013 supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after six years.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about two years and actually worked for 138 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years i.e.** demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 36 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (*2013 supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as Naginder Kumar Vs. HPSEB dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by Id. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 30,000/- (Rupees thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the

reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No.	: 31/2016
Date of Institution	: 20-1-2016
Date of Decision	: 27-11-2018

Shri Prem Lal s/o Shri Brij Lal, r/o Village Maharwada, P.O. Batwara, Tehsil Sunder Nagar,
District Mandi, H.P. .Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District
Mandi, H.P. .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Prem Lal s/o Shri Brij Lal, r/o Village Maharwada, P.O. Batwara, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder

Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during February 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Dehar Sub-Division who continuously worked till 1998 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not re-engaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department in 1998 however, clarified that petitioner had merely worked only for 51 days in the year 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for re-engagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2009 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP no. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however qua earnings of

petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the ld. Counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during February, 1998 is/was improper and unjustified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs. 17,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 51 days in the year 1998. It can be noticed that in the year 1998 petitioner has

merely worked for 51 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had engaged in year 1998 who worked upto February 1998 and was not engaged from 1997 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in February 1998 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or reengagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by Id. AR for petitioner applicability of Section 25-H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 51 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no iota of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 12 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for re-engagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforesated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about one year and actually worked for 51 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years i.e.** demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 37 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as *Naginder Kumar Vs. HPSEB* dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by ld. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 17,000/- (Rupees seventeen thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.17,000/- (Rupees seventeen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(Camp at Chamba)**

Ref. No. : 32/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Surat Ram s/o Shri Kanhiya Lal, r/o Village Khanoud, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Surat Ram s/o Shri Kanhiya Lal, r/o Village Khanoud, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during September 1997 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Dehar Sub-Division who continuously worked till 1998 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not re-engaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department in 1997 however, clarified that petitioner had merely worked only for 136 days in the year 1997 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for re-engagement when other workers were being engaged after 1997. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed

240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however qua earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during Sept., 1997 is/was improper and unjustified as alleged? ..OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs. 28,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 136 days in the year 1998. It can be noticed that in the year 1998 petitioner has merely worked for 136 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had engaged in year 1997 who worked upto November 1997 and was not engaged upto 1998 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in November 1997 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster-roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25- H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 51 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1

has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no iota of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1997 and the industrial dispute was raised after above 12 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for re-engagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calander year and his termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised**. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about one year and actually worked for 136 days as per mandays chart on record and that the services of petitioner were disengaged in 1997 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years i.e.** demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 42 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as **Naginder Kumar Vs. HPSEB** dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by ld. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 28,000/- (Rupees twenty eight thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 28,000/- (Rupees twenty eight thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
 (Camp at Chamba)**

Ref. No. : 33/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Lekh Ram s/o Shri Nandu Ram, r/o Village Sanihan, P.O. Dhawal, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent

: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Lekh Ram s/o Shri Nandu Ram, r/o Village Sanihan, P.O. Dhawal, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during September 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1994 as daily waged beldar in Dehar Sub-Division who continuously worked till 1998 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not re-engaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department from 1996 to 1998 however, clarified that petitioner had merely worked only for 19 days in the year 1996, 59 days in 1997 and 48 days in 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for re-engagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-

Conciliation Officer and thereafter Labour Commissioner, Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed Government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per Govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during Sept., 1998 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs. 27,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 126 days from 1996 to 1998. It can be noticed that in the year 1996 petitioner has merely worked for 19 days, 59 days in 1997 and 48 days in 1998. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had engaged in year 1996 who worked upto September, 1998 and was not engaged from 1994 till 1998 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in September, 1998 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for re-employment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25- H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding

one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 51 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate Govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 11 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for reengagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate Govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of

the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about one year and actually worked for 126 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years i.e.** demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 53 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as Naginder Kumar Vs. HPSEB dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by ld. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 27,000/- (Rupees twenty seven thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 27,000/- (Rupees twenty seven thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 34/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Raghu Ram s/o Shri Chamru Ram, r/o Village Sanihan, P.O. Dhawal, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Raghu Ram s/o Shri Chamru Ram, r/o Village Sanihan, P.O. Dhawal, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during September, 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate Government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1994 as daily waged beldar in Dehar Sub Division who continuously worked till 1998 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not re-engaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to reengage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits

denied that petitioner had worked with the respondent/department from 1996 upto 1998 however, clarified that petitioner had merely worked only for 39 days in the year 1996, 52 days in 1997 and 84 days in 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for re-engagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner, Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed Government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per Govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during Sept., 1998 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs. 33,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 175 days from 1996 to 1998. It can be noticed that in the year 1996 petitioner has merely worked for 39 days, 52 days in 1997 and 84 days in 1998. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had engaged in year 1996 and was not engaged from 1997 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in September, 1998 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest

from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25- H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 175 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering reemployment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate Govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 12 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for reengagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate Govt. was directed to make reference in 2015. **In Divisional Manager, HPPC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld.

Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calander year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief.**

18. I have gone through the rival contentions of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after six years.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about three years and actually worked for 175 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years i.e.** demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 45 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and

circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25** (SC) and for said reason judgment of Hon'ble High Court titled as Naginder Kumar Vs. HPSEB dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by Id. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 33,000/- (Rupees thirty three thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 33,000/- (Rupees thirty three thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 35/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Khem Raj s/o Shri Shankar, r/o Village Sanihan, P.O. Dhawal, Tehsil Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Khem Raj s/o Shri Shankar, r/o Village Sanihan, P.O. Dhawal, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during June, 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate Government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1994 as daily waged beldar in Dehar Sub-Division who continuously worked till 1998 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not re-engaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman, Hari Ram,

Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to reengage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department from 1996 upto 1998 however, clarified that petitioner had merely worked only for 19 days in the year 1996 and 129 days in 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for reengagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however qua earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during June, 1998 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.

3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.

4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs.31,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 148 days from 1996 to 1998. It can be noticed that in the year 1996 petitioner has merely worked for 19 days and 129 days in 1998. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had engaged in year 1996 who worked upto July, 1998 and was not engaged upto June, 1998 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by

respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in July, 1998 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for reemployment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for re-employment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25- H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 148 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering reemployment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 12 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for reengagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 vide Ex. RW1/C

Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforeslated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of

Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about two years and actually worked for 148 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** i.e. demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 52 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25** (SC) and for said reason judgment of Hon'ble High Court titled as *Naginder Kumar Vs. HPSEB* dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by Id. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 31,000/- (Rupees thirty one thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 31,000/- (Rupees thirty one thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No.	: 36/2016
Date of Institution	: 20-1-2016
Date of Decision	: 27-11-2018

Shri Jai Ram s/o Shri Likhu Ram, r/o Village Phagala, P.O. Maloh, Tehsil Sunder Nagar,
 District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District
 Mandi, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Sunder Singh Sippy, AR
For the Respondent	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Jai Ram s/o Shri Likhu Ram, r/o Village Phagala, P.O. Maloh, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during January, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate Government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1996 as daily waged beldar in Dehar Sub-Division who continuously worked

till 2001 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not re-engaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to reengage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department from 1998 upto 1999 however, clarified that petitioner had merely worked only for 102 days in the year 1998 and 128 days in 1999 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for reengagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2009 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during January, 2001 is/was improper and unjustified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs. 40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 230 days from 1998 to 1999. It can be noticed that in the year 1998 petitioner has merely worked for 102 days and 128 days in 1998. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had engaged in year 1998 who worked upto December, 1999 and was not engaged upto 2001 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as

juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2009 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in December, 1999 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for reemployment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25-H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 230 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering reemployment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate Govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to

petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after above 08 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for reengagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforesated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation o section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief.

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's case reported in 2013 (136) FLR**

893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised**. It was observed by the Hon'ble Apex Court in judgment (*2013 supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about two years and actually worked for 230 days as per mandays chart on record and that the services of petitioner were disengaged in 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years i.e.** demand notice was given 18.11.2009. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 47 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (*2013 supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as Naginder Kumar Vs. HPSEB dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by Id. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the

reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 38/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Chaman Lal s/o Shri Sant Ram, r/o Village Khanoud, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Chaman Lal s/o Shri Sant Ram, r/o Village Khanoud, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive

Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during May, 1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 10 years in raising the industrial dispute, what amount of back wags, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1996 as daily waged beldar in Dehar Sub Division who continuously worked till 1999 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not reengaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman, Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to reengage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department from 1996 to 1999 however, clarified that petitioner had merely worked only for 78 days in the year 1996, 82 days in 1997, 87 days in 1998 and 41 days in 1999 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for reengagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2009 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons

junior to petitioner as claimed were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the ld. Counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during May, 1999 is/was improper and unjustified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 45,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 288 days in from 1996 to 1999. It can be noticed that in the year 1996 petitioner

has merely worked for 78 days, 82 days in 1997, 87 days in 1998 and 41 days in 1999. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2009 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in May, 1999 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for reemployment or reengagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by Id. AR for petitioner applicability of Section 25-H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 09 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering reemployment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record

except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent more so when there is no reference from appropriate Govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after above 10 years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 HHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for reengagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HHLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calander year and his termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about four years and actually worked for 288 days as per mandays chart on record and that the services of petitioner were disengaged in 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given 18.11.2009. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 43 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as **Naginder Kumar Vs. HPSEB** dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by ld. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 45,000/- (Rupees forty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not

maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 45,000/- (Rupees forty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 39/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Doda Ram s/o Shri Longu Ram, r/o Village Dharli, P.O. Seri Kothi, Tehsil Sunder Nagar, District Mandi, H.P. .Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Doda Ram s/o Shri Longu Ram, r/o Village Dharli, P.O. Seri Kothi, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during January, 1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Dehar Sub Division who continuously worked till 1999 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for reengagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not reengaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman, Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 with offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to reengage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department from 1997 to 1999 however, clarified that petitioner had merely worked only for 29 days in month of December, 1997, 106 days in 1998 and 17 days in the year 1999 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for reengagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13

years whose case was false and vexatious declined to made reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during January, 1999 is/was improper and unjustified as alleged? . .OPR.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

- | | |
|-------------|--|
| Issue No. 1 | : Yes |
| Issue No. 2 | : Discussed |
| Issue No. 3 | : No |
| Issue No. 4 | : Discussed |
| Relief | : Petition is partly allowed awarding lump sum compensation of Rs. 33,000/- per operative part of award. |

REASONS FOR FINDINGS

Issues No.1, 2 and 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 152 days from 1997 to 1999. It can be noticed that in 1997 petitioner has merely worked for 29 days, 106 days in 1998 and in year 1999 petitioner has worked for 17 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from December, 1997 to January, 1999. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in January, 1999 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for reemployment or reengagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by Id. AR for petitioner applicability of Section 25-H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 149 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering reemployment, certainly violated Section 25-H of Act moreso when RW1

has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate Govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after above 11 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for reengagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Honble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about three years and actually worked for 152 days as per mandays chart on record and that the services of petitioner were disengaged in 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years i.e.** demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 51 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as Naginder Kumar Vs. HPSEB dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by ld. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 33,000/- (Rupees thirty three thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 33,000/- (Rupees thirty three thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 43/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Pyare Lal s/o Shri Tulsi Ram, r/o Village Siun, P.O. Khural, Tehsil Sunder Nagar,
 District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District
 Mandi, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent

: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Pyare Lal s/o Shri Tulsi Ram, r/o Village Siun, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D., Sunder Nagar, District Mandi, H.P. during July, 1997 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Dehar Sub-Division who continuously worked till 1998 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not reengaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to reengage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department in 1998 however, clarified that petitioner had merely worked only for 09 days in the year 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for reengagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner

Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to made reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however qua earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during July, 1997 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs.10,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 09 days in 1998. It can be noticed that in 1998 petitioner has merely worked for 09 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked in 1998 and was not engaged in 1997 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in September 1998 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by Id. AR for petitioner applicability of Section 25-H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding

one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 09 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no iota of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 13 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for reengagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of

the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about one year and actually worked for 09 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **thirteen years** i.e. demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 45 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as **Naginder Kumar Vs. HPSEB** dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by ld. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs.10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and

circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 44/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Gandhi Ram s/o Shri Ganga Ram, r/o Village Dol, P.O. Batwara, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Gandhi Ram s/o Shri Ganga Ram, r/o Village Dol, P.O. Batwara, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during February 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Dehar Sub-Division who continuously worked till 1998 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not reengaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits

denied that petitioner had worked with the respondent/department in 1998 however, clarified that petitioner had merely worked only for 55 days in the year 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for reengagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however qua earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during February, 1998 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.18,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 55 days in 1998. It can be noticed that in 1998 petitioner has merely worked for 55 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked in 1998 and was not engaged in 1997 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in February 1998 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster-roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join

service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25- H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 55 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 12 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for reengagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about one year and actually worked for 55 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** i.e. demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 44 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as **Naginder Kumar Vs. HPSEB** dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by ld. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or

less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 18,000/- (Rupees eighteen thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 18,000/- (Rupees eighteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 25/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Jagdish Chand s/o Shri Gopal Ram, r/o Village Seu Khurahal, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Jagdish Chand s/o Shri Gopal Ram, r/o Village Seu Khurahal, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during May, 1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1993 as daily waged beldar in Dehar Sub Division who continuously worked till 1999 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not re-engaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by

respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department from 1996 to 1999 however, clarified that petitioner had merely worked only for 60 days in month of December, 1996, 83 days in 1998 and 24 days in the year 1999 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for re-engagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during May, 1999 is/was improper and unjustified as alleged? . .OPR.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 32,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 167 days from 1996 to 1999. It can be noticed that in 1996 petitioner has merely worked for 60 days, 83 days in 1998 and in year 1999 petitioner has worked for 24 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1996 to May, 1999 and was not terminated in 1998 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workman had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2009 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in May, 1999 and at the same time, no disciplinary action was taken against petitioner while

terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for re-employment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25- H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 167 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after above 10 years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for re-engagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years

was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforesated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after six years.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court

factors which have weighed are that the petitioner in all remained engaged for about three years and actually worked for 167 days as per mandays chart on record and that the services of petitioner were disengaged in 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years** i.e. demand notice was given 18.11.2009. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 50 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25** (SC) and for said reason judgment of Hon'ble High Court titled as *Naginder Kumar Vs. HPSEB* dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by Id. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 32,000/- (Rupees thirty two thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 32,000/- (Rupees thirty two thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 41/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Prakash Chand s/o Shri Sant Ram, r/o Village Sahihan, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P. .Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Prakash Chand s/o Shri Sant Ram, r/o Village Sahihan, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during March, 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Dehar Sub-Division who continuously worked

till 1999 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not reengaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department in 1996 till 1998 however, clarified that petitioner had merely worked only for 20 days in the year 1996 and 67 days in 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for re-engagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during March, 1998 is/was improper and unjustified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 23,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 20 days in 1996 and 67 days in 1998. It can be noticed that from 1996 to 1998 petitioner has merely worked for 87 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1999. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1996 to 1998 and was not engaged upto 1999 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner has also admitted to have not made any representation from 1999 to 2009 before respondent for his engagement in service however denied that any person junior to petitioner had been regularized by the respondent. He has further admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were junior to petitioner. He has denied that respondent/department had not given break to petitioner deliberately although shown ignorance about the workmen who had been appointed on **compassionate ground** or as per **court order**.

13. RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department. He admitted that while engaging person junior to petitioner no notice had been issued to petitioner calling upon to join service when he absented from duty in July, 1998 and at the same time, no disciplinary action was taken against petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown seniority list Ex. PW1/C. It is manifest from seniority list that workers shown had been engaged and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for re-employment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by Id. AR for petitioner applicability of Section 25- H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 09 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that

termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 12 years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for re-engagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015.* **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's case reported in 2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in**

industrial dispute raised. It was observed by the Hon'ble Apex Court in judgment (*2013 supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about two years and actually worked for 87 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** i.e. demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 46 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (*2013 supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as *Naginder Kumar Vs. HPSEB* dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by Id. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 23,000/- (Rupees twenty three thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 23,000/- (Rupees twenty three thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.
24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.
25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No.	: 37/2016
Date of Institution	: 20-1-2016
Date of Decision	: 27-11-2018

Shri Ram Chand s/o Shri Sudaka Ram, r/o Village Bobar, P.O. Jadol, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Sunder Singh Sippy, AR
For the Respondent	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Ram Chand s/o Shri Sudaka Ram, r/o Village Bobar, P.O. Jadol, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during September, 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1996 as daily waged beldar in Dehar Sub Division who continuously worked till 1997 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not reengaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department in 1998 however, clarified that petitioner had merely worked only for 79 days in the year 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for re-engagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and

closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the ld. Counsel of petitioner and ld. Dy. D. A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during September, 1998 is/was improper and unjustified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 79 days in 1998. It can be noticed that in the year 1998 petitioner has merely worked for 79 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had engaged in year 1998 and was not engaged from 1997 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the

seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2009 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in September, 1998 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25-H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 09 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering reemployment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to

unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 11 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for re-engagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of Section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments

referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after six years.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about one year and actually worked for 79 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years** i.e. demand notice was given 18.11.2009. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 44 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as Naginder Kumar Vs. HPSEB dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by Id. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the

reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 42/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Shyam Lal s/o Shri Keshav Ram, r/o Village Tatar, P.O. Batwara, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Shyam Lal s/o Shri Keshav Ram, r/o Village Tatar, P.O. Batwara, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer,

Sunder Nagar Division H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during February, 1997 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Dehar Sub-Division who continuously worked till 1998 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not reengaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department in 1998 however, clarified that petitioner had merely worked only for 54 days in the year 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for reengagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2009 petitioner had made representation before the Labour Inspector-cum-Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however *qua* earnings of

petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the ld. Counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during February, 1997 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.18,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 54 days in 1998. It can be noticed that in 1998 petitioner has merely worked for

54 days. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked in 1998 and was not engaged in 1997 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workman had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in February, 1998 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for re-employment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25-H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 09 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 13 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for re-engagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforesated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to**

reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief".

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about one year and actually worked for 54 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **thirteen years** i.e. demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 45 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as **Naginder Kumar Vs. HPSEB** dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by ld. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs.18,000/- (Rupees eighteen thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.18,000/- (Rupees eighteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 40/2016

Date of Institution : 20-1-2016

Date of Decision : 27-11-2018

Shri Jai Singh s/o Shri Kanshi Ram, r/o Village Sanihan, P.O. Khural, Tehsil Sunder Nagar,
 District Mandi, H.P. . Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District
 Mandi, H.P. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sunder Singh Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Jai Singh s/o Shri Kanshi Ram, r/o Village Sanihan, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. during September, 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Dehar Sub Division who continuously worked till 1998 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the record maintained by it. It is alleged that petitioner had approached respondent several times for re-engagement who had given assurance to petitioner time and again when work and funds would be available then petitioner would be engaged but respondent had not reengaged petitioner which was unfair labour practice at instance respondent. The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating service of petitioner as his name too was not incorporated in seniority list. It is alleged that several workers junior to petitioner namely S/Sh. Sukh Ram, Liak Ram, Gulaba Ram, Jeet Ram, Shyam Lal, Tulsi Ram, Hari Ram, Bhuru Ram, Lal Ram, Ratan Lal, Mast Ram, Roop Lal, Laxman Hari Ram, Gambhira Ram, Lala Ra etc. had been retained in service and some of them had been regularized by the respondent/department however service of petitioner had been terminated illegally in violation of statutory provisions of Industrial Disputes Act (hereinafter called 'Act' for brevity). It is alleged that respondent had engaged persons junior to petitioner in the years 1998 till 2009 without offering petitioner offer of employment. It is alleged that while terminating of service of petitioner respondent had not followed the provisions of Sections 25-B, 25-N, 25-F (a), (b), 25-G and 25-H of the Act. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with full back wages and all other consequential benefits as petitioner had remained unemployed ever since his illegal termination besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked with the respondent/department from 1996 upto 1998 however, clarified that petitioner had merely worked only for 19 days in the year 1996, 59 days in 1997 and 30 days in 1998 and thereafter petitioner had left the job of his own sweet will without intimating respondent/department however denied that petitioner ever approached respondent for reengagement when other workers were being engaged after 1999. It is further stated that petitioner had not completed 240 days in both the years per required of Section 25-B of the Act. It is alleged that in the year 2010 petitioner had made representation before the Labour Inspector-cum-

Conciliation Officer and thereafter Labour Commissioner Himachal Pradesh had examined the case of petitioner that petitioner had raised demand notice after lapse of 11 to 13 years whose case was false and vexatious declined to make reference in pursuance to which petitioner filed CWP No. 2261/2014 and Hon'ble High Court of H.P. *vide* order dated 18.10.2014 directed government to make reference to this court for adjudication. It is alleged that when petitioner had left the job of his own sweet will only those workmen had been regularized by the respondent who had fulfilled criteria per govt. policy for regularization. It is also asserted by respondent that petitioner at no point of time had completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act was not attracted. It is asserted that persons junior to petitioner as claimed were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy Seniority list of workers Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, Seniority list Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.1.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during September, 1998 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 108 days from 1996 to 1998. It can be noticed that in the year 1996 petitioner has merely worked for 19 days, 59 days in 1997 and 30 days in 1998. In his affidavit Ex. PW1/A, petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated in 1998. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had engaged in year 1996 and was not engaged from 1997 as claimed by petitioner. It is specifically stated in the affidavit that petitioner had been engaged who worked with the respondent as daily waged beldar. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list Ex. PW1/B and that name of petitioner had not been deliberately included in the seniority list so prepared on the plea that petitioner had not completed 240 days in a year. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained in service whereas petitioner being senior to those junior workmen had been terminated illegally.

12. In cross-examination, petitioner (PW1) has also admitted to have not made any representation from 1999 to 2010 before respondent for his engagement in service however denied that any person junior to petitioner had not been retained and thereafter regularized by the respondent besides admitted that the names mentioned in claim petition as well as in affidavit Ex. PW1/A petitioner had not given addresses of co-workmen who were alleged to be junior to petitioner besides denied that respondent/department had not given any break to petitioner deliberately although shown ignorance about the workmen who had been appointed were either on **compassionate ground** or as per **court order**.

13. RW1 Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar, the contesting respondent has admitted in cross-examination that seniority list Ex. PW1/C had been issued by respondent/department besides admitted that while engaging workmen junior to petitioner, no notice had been issued to petitioner calling upon to join service when he absented from duty in September, 1998 and at the same time, no disciplinary action was taken against petitioner while terminating service of petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll, their names had been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days meaning thereby that since petitioner did not work for 240 days or more with respondent his name was not included in seniority list of workers maintained by respondent. It is admittedly not the case of respondent that any notice for reemployment or reengagement was issued to petitioner calling upon him to join service while engaging workers shown in seniority list Ex. PW1/C. It is manifest from seniority list that workers shown therein had been engaged after termination of petitioner and several others had joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service or any notice has been issued by respondent for reemployment which establishes violation of Section 25-H of the Act.

14. It has rightly been contended by ld. AR for petitioner applicability of Section 25- H of Act, it was not necessary to establish that petitioner had actually worked for 240 days in preceding

one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 108 days and from 1999 several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, certainly violated Section 25-H of Act moreso when RW1 has specifically admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

15. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent breaks as has been set up in claim petition. Thus, respondent is held to have not violated Section 25-G of Act petitioner having failed to prove that respondent had given same work to junior workers to petitioner and given fictional breaks to petitioner despite availability of sufficient work and funds at particular period.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after above 08 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. Be it stated that petitioner has admitted in cross-examination that he could not produce any records showing request for re-engagement and as such from termination till issuance of demand notice petitioner had not made any representation to respondent to engage him falsifying his claim to this effect. However, there is ample evidence on record that in 2012 *vide* Ex. RW1/C Labour Commissioner had declined to make reference against which CWP was filed which was allowed and appropriate govt. was directed to make reference in 2015. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

17. Relying upon the aforestated judgments, it has been contended that claim of petitioner cannot be defeated on the ground of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of

the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. **Reinstatement of the workman not the appropriate relief.** In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief”.**

18. I have gone through the rival contentions of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, in which it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors **such as the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in industrial dispute raised.** It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) that workman before Hon'ble Apex Court had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and had thus raised industrial dispute after **six years**.

19. It can be seen that Hon'ble Apex Court has categorically held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about three years and actually worked for 108 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years i.e.** demand notice was given 17.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 47 years who has sufficient spell of life to work and earn his livelihood. Moreover, after his termination petitioner was gainfully employed having agricultural land and also worked as labourer for his livelihood as admitted in cross-examination. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court (2013 *supra*) petitioner would not be entitled either for reinstatement or for back wages but only a lump-sum compensation would be appropriate relief in view of facts and circumstances of judgment **2013 (139) FLR 25 (SC)** and for said reason judgment of Hon'ble High Court titled as Naginder Kumar Vs. HPSEB dated 1.11.2007 passed in CWP No. 885 of 2007 relied upon by ld. Authorized Representative for petitioner is of no help to claim of petitioner. The judgments relied upon by petitioner on delay and laches is more or less settled law that claim of the petitioner could not be solely declined or defeated on the ground of delay and laches as discussed in foregoing paras.

20. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2018.

Sd/-

(K. K. SHARMA),

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 577/2015

Date of Institution : 04-12-2015

Date of Decision : 29-11-2018

Shri Karam Singh s/o Shri Raju, r/o Village Fhat, P.O. Sarol, Tehsil and District Chamba,
H.P. . Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Chamba, District Chamba, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh.Akshay Jaryal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Karam Singh s/o Shri Raju in the month of December, 2004 by Executive Engineer H.P.P.W.D. (B&R) Division, Chamba, District Chamba, (H.P.) and continuing the services of junior workmen as alleged by workman is proper and justified? If not what relief of service benefits including reinstatement and compensation the above workman is entitled to?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in claim petition reveal that petitioner had been engaged in June, 1994 who thereafter continuously worked till December, 2004 when service of petitioner was terminated *vide* letter No. PWC-Court case/2004-05-10998-11003 dated 29.11.2004. Averment made in the claim petition further revealed that petitioner had not been given any opportunity being heard before terminating his service whose work was consistently good. Not only this, while terminating service of petitioner, respondent had retained juniors namely Umesh Handa, Chaman Lal, Jarmo, Beli Ram, Tilak Raj Rakhinu, Tilak Raj, Ramesh, Bisan Dass, Sanjay Kumar & Ganesh and were consequently regularized whereas the petitioner had not been given opportunity of reemployment. The grievance of petitioner remains that junior persons to petitioner had been allowed to complete 240 days in each working year and they were regularized but the petitioner had been disengaged by respondent without assigning any reason. Accordingly, alleging violation of Section 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity), the petitioner seeks his reinstatement in service with full back wages, seniority and other consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that OA (D) 233/2003 had been filed before Hon'ble Administrative Tribunal in which direction had been passed to respondent to not give fictional breaks if the works and funds were available and to not terminate service of applicant/petitioner except in accordance with law. Admitted that petitioner had been engaged in June, 1994 who continuously worked till December, 2004 but had intermittently worked and for said reason he could not complete 240 days. It is alleged that petitioner had left the work at his own sweet will whose service had not been terminated in December, 2004 although admitted that petitioner raised demand notice in June, 2008 after about 4½ years. In so far as, allegation of retention of juniors as named in claim petition is concerned, it has been specifically alleged that the workers mentioned in para No. 4 of the claim petition were senior to petitioner. Reiterating his stand that petitioner himself abandoned the job, he

was precluded from claiming parity with the other workmen who had continuously worked with the respondent and thus there could no violation of Section 25-G of Act in such like situation. It is alleged that due to his repeated absence from duty, petitioner could not complete 240 days in any years he worked more particularly in preceding 12 months from date of termination and for said reason, petitioner was not regularized. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Denied that petitioner abandoned the job rather he was given intermittent breaks by the respondent deliberately so that petitioner could not avail benefit of Section 25-B of Act.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, copy of seniority list Mark-A, copy of order/judgment dated 19.9.2001 Ex. PW1/B, copy of letter dated 29.11.2004 Ex. PW1/C, copy of Award dated 1.8.2012 in Reference No. 4/2010 Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri J.S. Thakur, Executive Engineer, HPPWD Chamba, District Chamba, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of mandays charts of Umesh Kumar, Chaman, Vikram, Jarmo, Beli, Tilak, Ramesh Kumar, Bisan Dass, Sanjay Kumar and Ganesh Kumar Ex. RW1/C, Ex. RW1/D, Ex. RW1/E, Ex. RW1/F, Ex. RW1/G to Ex. RW1/M, copy of notice dated 29.11.2004 Ex. RW1/N and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 04.9.2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent during December, 2004 is/was illegal and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition suffers from vice of delay and laches? . .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Relief : Petition is partly allowed per operative part of award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that as per mandays chart Ex. RW1/B petitioner is shown to have been engaged in June, 1994 and worked till December, 2004. Be it noticed that in preceding 12 months from December, 2004 petitioner had merely worked for 129 days. Ex. RW1/N is notice dated 29.11.2004 *qua* retrenchment issued by respondent notifying to petitioner that as and when work and funds would be available then petitioner would be re-engaged. In any case, petitioner had not worked 240 days in preceding 12 months and violation of Section 25-F of Act on part of respondent is not established. In such like situation it was not necessary for the respondent to have either issued one month's prior notice or pay one month's wages in lieu thereof but respondent had issued notice while disengaging petitioner as stated above. In his cross-examination, petitioner has admitted that he himself had left the job in December, 2004 and that respondent had never disengaged him from service. That being so, certainly petitioner has failed to prove violation of Section 25-F of Act.

12. Stepping into witness box as PW1 petitioner has testified on oath proving his affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. In his statement petitioner has relied upon copies of judgment/order dated 19.9.2001 Ex. PW1/B and copy of Award dated 1.8.2012 in Reference No. 4/2010 Ex. PW1/D. The affidavit clearly shows that several workers who had joined in 1994 and one Sanjay Kumar in 1995 had been regularized and petitioner despite being senior to Tilak Raj, Ramesh Kumar, Bisan Dass, Sanjay Kumar and Ganesh Kumar whose mandays charts/working days have been shown in Ex. RW1/I to Ex. RW1/M respectively reveal that those above named workmen had been engaged in July, October, November, December, 1994 and March, 1995. It is evident from aforestated documentary evidence on record that all these five workmen as shown in mandays charts had been regularized in February, 2009 and thereafter in the year 2010. Although, petitioner has admitted in cross-examination that respondent had not engaged any one junior after 2004 but this admission is not of help to the respondent as there is documentary evidence on record as stated above that juniors were retained and were regularized.

13. It has rightly been contended by Id. Counsel for petitioner that for applicability of Section 25-G, it is not necessary that applicant/petitioner should have worked for 240 days as has been held in **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, it is not necessary for claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** He has further placed reliance upon mandays chart of petitioner reflecting that petitioner to have worked for 11 years although in none of years petitioner had completed 240 days but for the applicability of Section 25-G, it was not prerequisite that petitioner ought to have completed 240 days as has been held in aforestated judgment (*supra*).

14. RW1 Shri J.S. Thakur, Executive Engineer, HPPWD Chamba has although repudiated allegations of petitioner that junior to petitioner had been retained and regularized in service as he has denied this fact in his cross-examination but in view of Ex. RW1/I to Ex. RW1/M certainly the testimony of RW1 could not be relied so as to hold that junior to petitioner had not been retained and thus respondent had apparently not violated doctrine of 'Last come First go' envisaged under Section 25-G of Act. Although in his affidavit Ex. RW1/A has testified his stand *qua* non violation of Section 25-G of Act on the ground that petitioner had himself abandoned the job but as stated above, it was not required for the petitioner to prove that he had worked for 240 days as has been

held in judgment aforestated (*supra*) and otherwise also to prove the plea of abandonment, respondent was required to establish that petitioner had intended to abandon the job. Ld. Counsel for petitioner has relied upon the judgment of **Paras Ram versus Himachal Pradesh State Electricity Board Limited** reported in **2013(2) Him L.R. 617**. The relevant paras of the judgment is reproduced below:

“Industrial Disputes Act, 1947. Petitioner. Workman engaged as Beldar on 1.9.1983. worked upto 4.2.1992. re-engaged on 25.10.1994. stand of respondents-employer. Workman abandoned the job in the year 1995. Workman approached erstwhile HP Administrative Tribunal. In sequel to the orders passed by the Tribunal, he was re-engaged on 7.2.1996. He was again retrenched on 24.11.1996. petitioner raised the industrial dispute and after the receipt of the failure report the reference made by the State Government to the Industrial Tribunal-cum-Labour Court, Dharamshala. Reference dismissed by on 19.7.2011. Held, employer though has placed on record muster Ex. RW-1/E with effect from 25.12.1996 to 24.1.1997 and Ex. RW-1/A with effect from 25.1.1997 to 24.2.1997, but these will not advance the case of the employer since the employer has not placed on record muster rolls with effect from 25.11.1996 to 24.12.1996. Had the muster rolls been issued to the workman with effect from 25.11.1996 to 24.12.1996, the same ought to have been placed on record and then the inference could be drawn that he workman had absented himself. **The plea of abandonment is required to be proved like any other fact. The plea of abandonment raised by the employer is against the facts placed on record.** The workman has been engaged and disengaged in arbitrary manner by the employer....” (Para 3 to 6)

Industrial Disputes Act, 1947. Section 25(G). junior persons have been retained by the employer and the workman has been retrenched. Held. It was in violation of section 25(G) of the Industrial Disputes Act, 1947. writ petition is allowed. Award 19.7.2011 is set aside. employer directed to re-engage the workman forthwith as Beldar with seniority and continuity, but held, entitled to compensation of Rs. 50,000/- instead of back wages.....” (Para 3 to 6)

15. Ld. Counsel for the petitioner has contended that respondent was required to establish plea of abandonment like any other fact. He has pointed out that mere allegation that petitioner had abandoned the job was not sufficient so as to prove plea of abandonment, respondent was required to establish issuance of notice calling upon petitioner to join duty which has not been done in this case. As such, in absence of any corresponding documentary evidence establishing issuance of notice as stated above the uncorroborated testimony of respondent cannot be relied so as to hold that plea of abandonment has been proved. In view of foregoing discussions, it is held that respondent had violated Section 25-G of Act. Further there is no reliable evidence establishing that any junior to petitioner had been engaged after termination of petitioner in December, 2004. As such, it is held that respondent had not violated Section 25-H of Act.

16. In so far as claim of petitioner *qua* arrears of back wages is concerned, in his claim petition petitioner has alleged that he had not been engaged ever since his termination in December, 2004. In the witness box as PW1 in his cross-examination, he has admitted that he had cultivable land and had earning his livelihood from agricultural pursuits. Ld. D.A. for respondent has relied upon judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherfrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. As such, when petitioner had

sufficient income from agricultural pursuits, it cannot be stated that petitioner was not gainfully employed. In these circumstances, petitioner is held not entitled for back wages although petitioner is entitled for reinstatement in service with all consequential benefits including seniority in service. For the aforestated reasons, issue No. 1 is answered in affirmative whereas issue No. 2 is discussed. Both these issues are decided in favour of petitioner and against respondent.

Issue No. 3 :

17. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised. Issue is thus answered in negative in favour of petitioner and against the respondent.

Issue No. 4 :

18. Ld. Counsel for the petitioner vehemently argued that petitioner was illegally terminated in December, 2004 who thereafter had approached the office of the Labour Officer, Chamba where sufficient time took place and the Labour Officer, Chamba had submitted failure report in the year 2009 in pursuance to which Labour Commissioner Shimla had referred petitioner's reference to Labour Court-cum-Industrial Tribunal for adjudication on 16th November, 2015 and thereafter claim under Section 10 of Industrial Disputes Act was filed thus sufficient explanation has been given for the delay besides petitioner was unskilled labourer, fell in the category of beldar and had brought before Labour Officer, Chamba by issuing demand notice dated 9.6.2008. From December, 2004 to 2008, the petitioner claims to have approached various authorities who did not pay any heed to his request and from evidence on record delay is satisfactorily explained.

19. Ld. D.A. representing respondent/department has pointed out that retrenchment of petitioner in this case took place on December, 2004 and the industrial dispute was raised about $4\frac{1}{2}$ years from date of retrenchment. Repudiating the argument advanced by ld. D.A., ld. Counsel for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. GaribuRam, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches.

20. Ld. D.A. has representing State/respondent has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there exists an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Counsel for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue of the respondent moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination in this case is whether reference made at such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have been taken into consideration. In paragraph 23 sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manually work for respondent. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

21. Ld. Counsel for the petitioner has contended that termination of petitioner has been made in violation of provisions of Industrial Disputes Act, 1947 and thus petitioner is liable to reinstated in service with full back wages. On the other hand Ld. D.A. has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which criteria to be taken into consideration by Labour Court in awarding compensation has been laid down. It has been held that before exercising its

judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

22. I have gone through the judgment relied upon by Id. D.A. for respondent and of the view that judgment in **Geetam Singh's** case of (2013) does not apply to the case in hand in which Hon'ble Apex Court has laid down guidelines and factors to be considered by the Labour Court in cases involving violation of Industrial Disputes Act. In the case in hand before this Court, petitioner had promptly approached unlike in **Geetam Singh's** case when dispute was raised after six years and Hon'ble Apex Court instead of reinstatement of claimant/petitioner had awarded compensation but in the case in hand, demand notice was given to respondent after about 4½ years besides delay was satisfactorily explained by petitioner as PW1. Since the judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in 2013 (136) FLR 893 (SC) had different facts particularly on delay in giving demand notice by petitioner before Hon'ble Apex Court after six years which does not apply in the case in hand. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for relief of reinstatement with other consequential benefits such as seniority and continuity in service instead of lump sum compensation. This issue is answered accordingly.

Relief:

23. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages**, leaving the parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2018.

Sd/-
 (K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 794/2016

Date of Institution : 19-11-2016

Date of decision : 29-11-2018

Shri Vidhi Chand s/o Shri Beli Ram, r/o Village Ratadi, P.O. Raipur, Tehsil Bhatiyat,
 District Chamba, H.P. . Petitioner.

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh, Shimla.
2. The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P.
. Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Vidhi Chand s/o Sh. Beli Ram, r/o Village Ratadi, P.O. Raipur, Tehsil Bhatiyat, Distt. Chamba, H.P. *w.e.f.* 1/4/2006 by (1) the Principal Chief Conservator of Forests, Himachal Pradesh Shimla-1, & (2) the Divisional Forest Officer, Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis *w.e.f.* 20-5-1994 to 31-3-2006 and has raised his industrial dispute *vide* demand notice dated 13-4-2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll *w.e.f.* 20.5.1994 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched alongwith petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and

void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked alongwith petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner alongwith other retrenched workmen consequent thereto approached the government when State Government had taken decision to re-engage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be re-engaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been re-engaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to re-engage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice *qua* his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference No. 117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition No. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been re-engaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been re-engaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 1.4.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same

was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 1.4.2006 with further direction to respondent to re-engage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections *qua* maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go alongwith project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to re-engage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of letter dated 21.12.2004 Ex. PW1/B, copy of letter dated 1.1.2009 Ex. PW1/C, copy of letter dated 15.12.2009 Ex. PW1/D, copy of letter dated 3.12.2009 Ex. PW1/E, copy of letter dated 15.2.2006 Ex. PW1/F, copy of letter dated 29.2.2004 Ex. PW1/G, copy of letter dated 17.11.2008 Ex. PW1/H, copy of letter dated 2.1.2014 Ex. PW1/I, copy of letter dated 21.9.1994 Ex. PW1/J, copy of experience certificate of Shyam Lal Ex. PW1/K, copy of RTI information dated 4.1.2011 Ex. PW1/L, copy of RTI information dated 22.9.2014, 11.9.2014, 18.9.2014 Ex. PW1/M, copy of judgment dated 1.12.2009 Ex. PW1/N, copy of appeal of appeal order dated 28.2.2013 Ex. PW1/O, copy of RTI information dated 1.1.2014 Ex. PW1/P, copy of order of Bishan Dass dated 2.12.2008 Ex. PW1/Q, copy of RTI dated 14.8.2014 Ex. PW1/R, copy of letter dated 12.5.2009 and 21.1.2010 Ex. PW1/S, copy of staff engaged on 3.12.2009 Ex. PW1/T and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of notice dated 20.2.2006 Ex. RW1/C and closed evidence.

7. I have heard the Authorized Representative/Counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed by on 18.10.2017 for determination.

1. Whether termination of the services of petitioner by the respondents *w.e.f.* 1.4.2006 is/was illegal and unjustified as alleged? . .OPP.

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2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPR.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.
5. Whether the claim petition is bad for non-joinder of necessary party as alleged? . .OPR.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Unpressed
Issue No. 4	: No
Issue No. 5	: Unpressed
Relief	: Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/ workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot re-engage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in

project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/Counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur Vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Nilkar and others Vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no *iota* of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B. S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Vidhi Chand figures at serial No. 43 who is shown to have been appointed on 20.5.1994 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for 221 days in 1994, 360 days in 1995, 360 days in 1996, 352 days in 1997, 359 days in 1998, 360 days in 1999, 350 days in 2000, 355 days in 2001, 362 days in 2002, 339 days in 2003, 349 days in 2004, 107 days in 2005. Ex. RW1/C is the notice dated 20.2.2006 issued to the petitioner by respondent notifying therein closure of Changer Project Palampur on 31.3.2006 and thereafter service of petitioner would be terminated. Although, mandays chart Ex. RW1/B does not disclose petitioner to have worked after 2005 but by issuance of notice Ex. RW1/C, it is established that petitioner was working on 20.2.2006 and thus even though the mandays chart Ex. RW1/B does not reflect petitioner to have been engaged in 2006 has not to be read against him rather in view of specific admission in the notice Ex. RW1/C issued by respondent which has remained unchallenged in favour of petitioner clearly established that petitioner was employee/engaged till February, 2006. As such, this court is left with no option but to hold that in February, 2006 petitioner was engaged in continuity and had thus completed 240 days preceding his termination in the month of March, 2006. Accordingly, respondent is held to have violated Section 25-F of Act.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll *w.e.f.* 20.5.1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent *vide* verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project.

Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/F was issued *qua* one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco-Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner alongwith other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government nor forest department H.P. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/E stipulating therein about re-engagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.12.2009 Ex. PW1/D was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for their written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010. It is evident from letter Ex. PW1/S dated 21.1.2010 of Divisional Forest Officer Palampur whereby petitioner was intimated about existence of various government departments and that Joint Secretary (Forests) to the Govt. of H.P. *vide* letter dated 1.1.2010 has proposed to engage daily wage workers including petitioner. Thus, it seems that in the year 2010 through correspondence petitioner was assured *qua* absorption in other government departments however till raising of industrial dispute by petitioner and consequently receiving reference from the Labour Commissioner, petitioner was not absorbed or engaged in other govt. departments despite repeated assurances. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. Counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award dated 02.12.2008 passed in reference No.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department who was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award dated 2.12.2008 in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal filed by State Govt. of H.P. against judgment of Hon'ble High Court of H.P., award aforesaid passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para No. 11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was re-engaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being re-engaged in job with seniority and continuity in service as consequential relief.

15. It is also evident from evidence on record that IGCP Palampur was under the complete control of State Government as Project Director, Member Secretary of Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act besides authorized to do so by Chairman, Secretary (Forests) to the Govt. of H.P. It is evident from para No. 5 of the affidavit Ex. PW1/A which has remained unchallenged in cross-examination that IGCP Palampur was under the control of Divisional Forest Officer Palampur which was monitored by a high powered committee headed by Principal Chief Conservator of Forest. Thus, it establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as has come in evidence. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with the IGCP Palampur. Thus, even when IGCP Palampur was controlled through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. **However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur.** Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of re-engagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same, the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh Vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void *ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void *ab-initio* as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para No. 22 of the judgment of (2013) that "*if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments*".

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para No. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of

having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **titled as North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched from service without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be re-engaged with seniority and in continuity in service. Issue No. 1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* 1st April, 2006 was illegal and unjustified and the petitioner is entitled to be re-engaged alongwith seniority, past service benefits except back wages. Issues No. 1 and 2 are answered accordingly.

Issue No. 4 :

18. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 1.4.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., Ld. Counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Issues No. 3 & 5 :

19. Both these issues were not pressed by ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 802/2016

Date of Institution : 19-11-2016

Date of decision : 29-11-2018

Shri Sanjeev Kumar s/o Shri Pritam Chand, r/o Village Pardra Lahla, P.O. Hanghol, Tehsil Palampur, District Kangra, H.P. . Petitioner.

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh, Shimla

2. The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s)

: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Sanjeev Kumar s/o Shri Pritam Chand, r/o Village Pardra Lahla, P.O.Hanghol, Tehsil Palampur, District Kangra, H.P. w.e.f. 01-04-2006 by (i) the Principal Chief Conservator of Forests, Himachal Pradesh Shimla-1, & (ii) the Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. who had worked as beldar on daily wages basis w.e.f. 19-01-1998 to 31-03-2006 and has raised his industrial dispute *vide* demand notice dated 10-04-2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll *w.e.f.* 19.1.1998 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched alongwith petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked alongwith petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner alongwith other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be re-engaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen

had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur alongwith written consent of these employees for their re-engagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice *qua* his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference No.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No.2511 of 2009 which was dismissed by Hon'ble High Court of H.P. consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been re-engaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along- with the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been re-engaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 1.4.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to re-engage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections *qua* maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go alongwith project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to

retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of letter dated 21.12.2004 Ex. PW1/B, copy of letter dated 1.1.2009 Ex. PW1/C, copy of letter dated 15.12.2009 Ex. PW1/D, copy of letter dated 3.12.2009 Ex. PW1/E, copy of letter dated 15.2.2006 Ex. PW1/F, copy of letter dated 29.2.2004 Ex. PW1/G, copy of letter dated 17.11.2008 Ex. PW1/H, copy of letter dated 2.1.2014 Ex. PW1/I, copy of letter dated 21.9.1994 Ex. PW1/J, copy of experience certificate of Shyam Lal Ex. PW1/K, copy of RTI information dated 4.1.2011 Ex. PW1/L, copy of RTI information dated 22.9.2014, 11.9.2014, 18.9.2014 Ex. PW1/M, copy of judgment dated 1.12.2009 Ex. PW1/N, copy of appeal of appeal order dated 28.2.2013 Ex. PW1/O, copy of RTI information dated 1.1.2014 Ex. PW1/P, copy of order of Bishan Dass dated 2.12.2008 Ex. PW1/Q, copy of RTI dated 14.8.2014 Ex. PW1/R, copy of reply to demand notice Ex. PW1/S, copy of letter dated 20.2.2009, 12.5.2009 & 21.1.2010 Ex. PW1/T, copy of staff engaged as on 3.12.2009 Ex. PW1/U and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B. S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of notice dated 20.2.2006 Ex. RW1/C and closed evidence.

7. I have heard the Authorized Representative/Counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed by on 18.10.2017 for determination.

1. Whether termination of the services of petitioner by the respondents *w.e.f. 01- 04-2006* is/was illegal and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.
5. Whether the claim petition is bad for non-joinder of necessary party as alleged? . .OPR.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Unpressed
Issue No. 4	: Unpressed
Issue No. 5	: No
Relief	: Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/ workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot re-engage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/Counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur Vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S. M. Nilkar and others Vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP

Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Sanjeev Kumar figures at serial No. 76 who is shown to have been appointed on 19.1.1998 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for 295 days in 1998, 298 days in 1999, 330 days in 2000, 275 days in 2001, 253 days in 2002, 224 days in 2003, 59 days in 2004. Ex. RW1/C is the notice dated 20.2.2006 issued to the petitioner by respondent notifying therein closure of Changer Project Palampur on 31.3.2006 and thereafter service of petitioner would be terminated. Although, mandays chart Ex. RW1/B does not disclose petitioner to have worked after 2004 but by issuance of notice Ex. RW1/C, it is established that petitioner was working on 20.2.2006 and thus even though the mandays chart Ex. RW1/B does not reflect petitioner to have been engaged in 2005 and 2006 has not to be read against him rather in view of specific admission in the notice Ex. RW1/C issued by respondent which has remained unchallenged in favour of petitioner clearly established that petitioner was employee/engaged till February, 2006. As such, this court is left with no option but to hold that in February, 2006 petitioner was engaged in continuity and had thus completed 240 days preceding his termination in the month of March, 2006. Accordingly, respondent is held to have violated Section 25-F of Act.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll *w.e.f.* 19.1.1998 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent *vide* verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/F was issued *qua* one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco-Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government nor forest department H.P. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/E stipulating therein about re-engagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.12.2009 Ex. PW1/D was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for their written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010. It is evident from letter Ex. PW1/T dated 21.1.2010 of Divisional Forest Officer Palampur whereby petitioner was intimated about existence of various government departments and that Joint Secretary (Forests) to the Govt. of H.P. *vide* letter dated 21.1.2010 has proposed to engage daily wage workers including petitioner. Thus, it seems that in the year 2010 through correspondence petitioner was assured *qua* absorption in other government departments however till raising of industrial dispute by petitioner and consequently receiving reference from the Labour Commissioner, petitioner was not absorbed or engaged in other govt. departments despite repeated assurances. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. Counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award dated 02.12.2008 passed in reference No.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department who was later deputed to work with IGCP Palampur. It has not been disputed by Ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award dated 2.12.2008 in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal filed by State Govt. of H.P. against judgment of Hon'ble High Court of H.P., award aforesaid passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para No.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was re-engaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being re-engaged in job with seniority and continuity in service as consequential relief.

15. It is also evident from evidence on record that IGCP Palampur was under the complete control of State Government as Project Director, Member Secretary of Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act besides authorized to do so by Chairman, Secretary (Forests) to the Govt. of H.P. It is evident from para No. 5 of the affidavit Ex. PW1/A which has remained unchallenged in cross-examination that IGCP Palampur was under the control of Divisional Forest Officer Palampur which was monitored by a high powered committee headed by Principal Chief Conservator of Forest. Thus, it establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as has come in evidence. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on

record muster rolls or wage bills which could remove mystery of petitioner being employed with the IGCP Palampur. Thus, even when IGCP Palampur was controlled through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. **However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur.** Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same, the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh Vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void *ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void *ab-initio* as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that "*if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments*".

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para No. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **titled as North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherfrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu**

Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched from service without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue No.1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* 1st April, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged alongwith seniority, past service benefits except back wages. Issues No. 1 and 2 are answered accordingly.

Issue No. 5 :

18. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 1.4.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., Ld. Counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Issues No. 3 & 4 :

19. Both these issues were not pressed by Ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.
22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.
23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

ब अदालत कार्यकारी दण्डाधिकारी, कल्पा, जिला किन्नौर (हि० प्र०)

मुकद्दमा नम्बर
13/2019

तारीख रजुआ
09—10—2019

Smt. Bimla Devi w/o L/Sh. Lok Bahadur, r/o Village Shudarang, Tehsil Kalpa, Distt. Kinnaur (H. P.).

बनाम

1. आम जनता, ग्राम शुदारंग
2. प्रधान, ग्राम पंचायत शुदारंग, तहसील कल्पा, जिला किन्नौर (हि० प्र०)

विषय.—प्रार्थी के स्व० पति का नाम ग्राम पंचायत शुदारंग के जन्म एवं मृत्यु पंजीकरण रजिस्टर में दर्ज करवाये जाने बारे अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करने वारे।

हर खास व आम जनता को बजरिया इश्तहार के माध्यम से सूचित किया जाता है कि Smt. Bimla Devi ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन—पत्र मय शपथ—पत्र प्रस्तुत किया है कि उनके स्व० पति श्री Lok Bahadur पुत्र श्री काशी राम की मृत्यु दिनांक 12—09—2005 को गांव शुदारंग में हुई है तथा अज्ञानतावश प्रार्थी ने उसका पंजीकरण ग्राम पंचायत शुदारंग के जन्म एवं मृत्यु पंजीकरण रजिस्टर में दर्ज नहीं करवाया है। अब प्रार्थी उपरोक्त मृत्यु तिथि ग्राम पंचायत शुदारंग के जन्म एवं मृत्यु पंजीकरण रजिस्टर में दर्ज करवाना चाहती है। इस विषय आदेश जारी करने का अनुरोध किया है।

अतः ग्राम पंचायत शुदारंग, तहसील कल्पा, जिला किन्नौर की आम जनता को बजरिया इश्तहार के माध्यम से सूचित किया जाता है कि यदि Bimla Devi पत्नी स्व० श्री लोक बहादुर की मृत्यु दिनांक 12—09—2005 को हुई है, का पंजीकरण ग्राम पंचायत शुदारंग के मृत्यु पंजीकरण रजिस्टर में दर्ज करने बारे कोई आपत्ति हो तो वह दिनांक 08—11—2019 को या इससे पूर्व अदालत में हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा आवेदन—पत्र पर मृत्यु पंजीकरण के आदेश पारित कर सचिव ग्राम पंचायत शुदारंग को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज दिनांक 09—10—2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
कल्पा, जिला किन्नौर (हि० प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी, जुब्बल, जिला शिमला, हिमाचल प्रदेश

श्री विजय सिंह पुत्र स्व0 श्री सीलू निवासी गांव बठाह, डाकघर हाटकोटी, उप-तहसील सरस्वतीनगर, जिला शिमला, हि0 प्र0 प्रार्थी।

बनाम

आम जनता

उनवान मुकद्दमा—दरख्खास्त बराए दुरुस्त किए जाने प्रार्थी का नाम भू—राजस्व रिकार्ड महाल राईका, पटवार सर्कल मिहाना, तहसील जुब्बल बारे।

यह कि श्री विजय सिंह पुत्र स्व0 श्री सीलू निवासी गांव बठाह, डाकघर हाटकोटी, उप-तहसील सरस्वतीनगर, तहसील जुब्बल, जिला शिमला, हि0 प्र0 ने अद्योहस्ताक्षरी की अदालत में एक प्रार्थना—पत्र प्रस्तुत किया है जिसमें आग्रह किया गया है कि उसका नाम चक राईका, पटवार वृत्त मिहाना में भगत राम पुत्र स्व0 सीलू दर्ज माल कागजात है परन्तु प्रार्थी ने अपना नाम बदल कर विजय सिंह रख दिया है जिसे वह दरुस्त करवाना चाहता है जिसकी छानबीन गिरदावर हल्का जुब्बल व पटवारी मिहाना से करवाई जा चुकी है मुताबिक छानबीन रिपोर्ट से भी पाया गया है कि प्रार्थी ने अपना नाम भगत सिंह से बदल कर विजय सिंह रख दिया है जिसे दुरुस्ती बारे आग्रह सही है। जिस बारे प्रार्थी का आधार कार्ड, ग्राम पंचायत बढ़ाल का प्रमाण—पत्र, दैनिक समाचार—पत्र की प्रतिलिपी, परिवार रजिस्टर की नकल व वाशिन्दगान के व्यानात कलमबद्ध करके संलग्न मिसल किये गये हैं।

प्रार्थना—पत्र में आगामी उचित कार्यवाही करने से पूर्व इस इश्तहार के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थी के नाम को राजस्व अभिलेख, पटवार सर्कल मिहाना चक राईका, तहसील जुब्बल, जिला शिमला, हि0 प्र0 में भगत राम के स्थान पर विजय सिंह पुत्र स्व0 श्री सीलू दुरुस्त करने पर कोई उजर व एतराज हो तो वह दिनांक 08—11—2019 को या इससे पूर्व अद्योहस्ताक्षरी की अदालत में हाजिर होकर अपना लिखित व मौखिक एतराज प्रस्तुत करे, दीगर सूरत में यह समझा जाएगा कि प्रार्थी के नाम को दुरुस्त करने पर किसी को कोई आपत्ति नहीं है तथा राजस्व अभिलेख में प्रार्थी के नाम की दुरुस्ती के आदेश पारित कर दिये जावेंगे।

आज दिनांक 09—10—2019 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
जुब्बल, जिला शिमला (हि0 प्र0)।

नाम परिवर्तन

मैं, Kiran Pooner d/o Prem Chand w/o Sukhdev, r/o V.P.O. Ajouli, Tehsil & District Una सूचित करती हूं कि मेरा नाम गलती से 10वीं के स्कूल सर्टिफिकेट में Soma Devi दर्ज हुआ है जबकि सही नाम Kiran Pooner है। Kiran Pooner व Soma Devi दोनों नाम की महिला मैं ही हूं।

KIRAN POONER,
d/o Prem Chand w/o Sukhdev, r/o V.P.O. Ajouli,
Tehsil & District Una (H.P.).